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

% Reserved on: 12th April, 2017
Decided on: 18th April, 2017

\+ **BAIL APPLN. 2153/2016**

VIJAY DIXIT ..... Petitioner

Represented by: Mr.Manoj Ohri, Sr. Advocate with Mr. Arun Srivastava and Mr. Abhimanyu Singh, Advocates.

versus

STATE ..... Respondent

Represented by: Mr. Hirein Sharma, APP for the State with Inspector Satya Prakash, EOW.
Mr. Nishant Datta and Mr. Amod Sharma, Advocates for the complainant/Association.
Mr. Aashish George and Mr. R.K. Jeenwal, Advocates for complainants Pradeep Malhotra and Pooja Malhotra.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the petitioner seeks bail in case FIR No. 82/2011 for offences punishable under Sections 409/420/120B IPC at PS Economic Offences Wing, Delhi on the complaint of Lt. Col. Surinder Pal Singh Aurora.

2. The allegations in the complaint against the petitioner and his wife, who were the promoters of M/s Senior Mall having its registered office at 1/1, Shanti Niketan, New Delhi and other unknown persons were that both

Vijay Dixit and Kalpana Dixit representing themselves to be promoters of M/s Senior Builders Limited offered lucrative schemes for the purpose of investment in their Shopping Mall namely Senior Mall, Sector-32, Noida, U.P. They further assured the credibility of the company, its sound economic condition and good reputation. They represented that the company had entered into a collaboration agreement for developing a multiplex-cum-shopping complex on the land bearing Plot No.BW-55, Sector-32, City Centre, Noida, U.P. admeasuring 4332 sq. mtrs. allotted to M/s MMT Amusement Park Pvt. Ltd. and that the construction of the Shopping Mall would be completed before 31st March, 2006. Pursuant to the representation of the petitioner and his wife, the complainant entered into a Builder-Buyer Agreement on 3rd October, 2005 as per which he was allotted space No.F-11 on the first floor of Multiplex-cum-shopping complex admeasuring approximately 913.12 sq. ft. for a total consideration of ₹30 lakhs which was paid in installments as desired by the accused persons.

3. A letter dated 31st October, 2008 was sent stating that the Mall was ready for fit outs and the complainant should take possession of the shop within ten days. On personally visiting the site, the complainant found that the Mall was not ready for possession and lot of finishing work was yet to be completed. The complainant met number of other investors who had also paid the amount and had not been allotted the possession of the allotted space.

4. Later it was revealed to the complainant and others that on 12th July, 2005 the Noida Authority had cancelled the allotment of M/s MMT Amusement Park Pvt. Ltd. for non-payment of almost ₹4 crores and a case in

this regard was pending in the High Court of Allahabad. Further a sale notice dated 21st September, 2010 was also published in the newspapers by United Bank of India, Nehru Place Branch, mentioning that on account of non-payment of the loan the property named Senior Mall had been put to auction.

5. Contention of learned counsel for the petitioner is that though on 12th July, 2005 the Noida Authority had cancelled the allotment of M/s MMT Amusement Park Pvt. Ltd., the said order was stayed by the Hon'ble High Court of Judicature at Allahabad on 24th August, 2005. Thus when the petitioner entered into the Builder-Buyer Agreement dated 3rd October, 2005 the operation of the order of Noida Authority dated 12th July, 2005 cancelling the allotment of M/s MMT Amusement Park Pvt. Ltd. for non-payment of almost ₹4 crores had been stayed. It is further submitted that only on 25th January, 2007 Noida Authority directed the petitioner not to create any third party agreement and all the agreements between the petitioner and other accused are either prior to 12th July, 2005 or between 24th August, 2005 and 25th January, 2007. Hence the investors were not cheated by the petitioner and the co-accused. It is further contended that the dues of United Bank of India, Nehru Place Branch have already been cleared by the petitioner and in this regard no dues certificate as per the full and final settlement of the loan account pursuant to the settlement was issued by the Union Bank of India on 29th November, 2010. It is submitted that the intention of the petitioner was not dishonest and it was only because of some intervening circumstances for which remedial action was taken there was a delay in handing over the possession which was also completed before the

stipulated time and letters were issued to the complainant and other victims, however, they refused to take possession.

6. As regards the allegations of Section 409 IPC are concerned no material has been collected by the Investigating Officer during the course of the investigation that the petitioner or the co-accused has siphoned off the money.

7. It is further submitted that out of the 14 FIRs registered against the petitioner, in two the petitioner had already been acquitted, one matter has been settled and in others, the petitioner was arrested and is on bail or not arrested. The petitioner is in custody only in FIR Nos. 239/2008, 20/2011, 82/2011 and 83//2011, all registered at PS Economic Offences Wing. It is further contended that the petitioner has been in custody for 40 months now and the trial is likely to take time and he cannot be kept behind the bars indefinitely. The petitioner is willing to abide by any condition to ensure his presence during the course of trial.

8. Learned senior counsel for the petitioner relies upon the decisions reported as 2015 (9) SCC 96, *Robert John D'souza & Ors. vs. Stephen V. Gomes & Ors*., 2012 (8) SCC 547 *Sadhupati Nageswara Rao vs. State of A.P.*, AIR 1968 SC 700 *State of Gujarat vs. Jaswantlal Nathalal*, AIR 1954 Allahabad 583 *State vs. Tirath Das*, 2003 (7) SCC 399 *Kailash Kumar Sanwatia vs. State of Bihar*, 2016 (2) JCC 2017 *Ashok Kumar vs. State (NCT of Delhi)*, 2015 (3) JCC 1493 *Rajat Sharma vs. State of NCT of Delhi*, *Jitender Kumar vs. State of NCT of Delhi* (Bail Application No.2702/2015 decided on 24th February, 2016) and AIR 2012 SC 830 *Sanjay Chandra vs. Central Bureau of Investigation*.

9. Learned APP for the State on the other hand contends that besides the allegations noted in the FIR, as noted above despite a loan having been taken by the company M/s Senior Builders Limited from the United Bank of India, Nehru Place Branch and the property in question mortgaged to the Bank, in the Builder-Buyer Agreement it was represented that the property was free from all kinds of charges, liens, taxes, encumbrances and litigation of any type in any Court of law and that all levies till date of signing of Agreement have been paid, whereas neither the penalty imposed by the Noida Authority was paid and the complex was mortgaged to United Bank of India. Despite assurances that the possession will be handed over within six months to one year, the possession has not been handed over till date. Each FIR against the petitioner has number of victims. Even in FIR No.82/2011 wherein the petitioner seeks bail by the present petition as many as 12 complainants/victims were cited with the charge sheet and supplementary charge sheet qua the claims of eight other victims will be filed shortly.

10. A perusal of the record reveals that in the above noted FIR besides the complainant Lt. Col. Surinder Pal Singh Aurora, the eleven other victims cited in the charge sheet are Namita Kataria, Amarjeet Singh, Kuldeep Tyagi & Rashmi Tyagi, Priyanka Awasthy & Savita Devasar, Bharat Singh Yadav, Pradeep Malhotra & Pooja Malhotra, G.S. Chhabra, Neetu Dheer & Mrs. Surjeet Dheer, Rewa Chopra, Surender Kumar Sikand & Vijay Sikand and M/s VSF Realtors Pvt. Ltd. As per the records though the agreement was entered into with eleven victims prior to the restraint order however, the agreement with Pradeep Malhotra & Pooja Malhotra was entered into after the restraint order on 5th February, 2007. Case of Rewa Chopra was of secondary sale and the agreement with the earlier investor was pre-restraint.

However, as noted above in all the agreements it was represented that the property was free from all encumbrances whereas the mortgage of the property had already been executed with the United Bank of India, Nehru Place Branch. Thus, it cannot be said that a false representation was not made to the victims.

11. As regards the decisions reported as *Robert John D'souza*, *Sadhupati Nageswara Rao*, *State of Gujarat vs. Jaswantlal Nathalal*, *State vs. Tirath Das* and *Kailash Kumar Sanwatia* (Supra) are concerned, they all relate to the issue that Section 409 IPC is not made out on the facts of the case. This issue has already been dealt with by this Court and the petition i.e. Crl. M.C. No. 2317/2016 filed by the petitioner challenging framing of charge under Section 409 IPC has been dismissed vide order dated 21st March, 2016. In the cases of *Ashok Kumar*, *Rajat Sharma* and *Jitender Kumar* (supra) on which reliance is placed, this Court noted that there was no likelihood of the petitioners therein either tampering with the evidence or fleeing away from justice. As noted above, out of 14 FIRs/cases registered against the petitioner the petitioner was declared proclaimed offender in four cases. Hence there is no material to show that during the course of the trial, if granted bail the petitioner will be available for trial.

12. Indubitably, with the number of victims and supplementary charge sheet likely to be filed, the trial is likely to take time however, in view of the previous conduct of the petitioner who has been declared a proclaimed offender in four out of 14 FIRs registered against him and his wife Kalpana Dixit who is the co-accused in the present case, has also been declared a

proclaimed offender, this Court finds no ground to grant bail to the petitioner at this stage.

13. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 18, 2017
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