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

\+ BAIL APPLN. 1384/2017

SUSHANT MUTTREJA & ANR ..... Petitioners

Through: Mr.Sanjay Manchanda & Mr. Rajeev Wassan, Advocate.

versus

STATE ..... Respondent

Through: Mr. Mukesh Kumar, APP for the State alongwith SI Suresh Chand from EOW.

Ms. Swati Verma, Advocates for some complainants.

\+ BAIL APPLN. 1385/2017

SUSHANT MUTTREJA & ANR ..... Petitioners

Through: Mr.Sanjay Manchanda & Mr. Rajeev Wassan Advocate.

versus

STATE GOVT OF NCT OF DELHI ..... Respondent

Through: Mr. Mukesh Kumar, APP for the State with Inspector Paramjeet Singh from EOW Crime Branch.

Ms. Swati Verma, Advocates for some complainants.

\+ BAIL APPLN. 1386/2017

SUSHANT MUTTREJA & ANR ..... Petitioners

Through: Mr.Sanjay Manchanda & Mr. Rajeev Wassan Advocate.

versus

STATE ..... Respondent

Through: Mr.Akshai Malik, APP for the State alongwith SI Yogender from EOW.
Ms. Swati Verma, Advocates for some complainants.

\+ BAIL APPLN. 1387/2017

SUSHANT MUTTREJA & ANR ..... Petitioners

Through: Mr.Sanjay Manchanda & Mr. Rajeev Wassan Advocate.

versus

STATE ..... Respondent

Through: Mr. Akshai Malik, APP for the State alongwith SI Jitender from EOW.
Ms. Swati Verma, Advocates for some complainants.

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

O R D E R

% **29.08.2017**

1. By these petitions filed under Section 439 of the Code of Criminal Procedure, 1973, the petitioners seek grant of interim bail for three months in case FIR Nos. 35/2016, 36/2016, 46/2016 and 47/2016, under Section 420/406/409/120B of the Indian Penal Code (hereinafter referred to as 'IPC') registered at Police Station Economic Offences Wing, Mandir Marg, New Delhi.

2. The case of the prosecution is that the complainants had invested huge amount in the commercial project (IT Space) of Cosmic Structure Ltd.

situated at Cosmic Corporate Park, Noida and in the Memorandum of Understanding there was a mention of assured return for a period of 48-50 months/ till the possession from the date of investment. The company paid the assured return regularly upto March 2015 but thereafter stopped making the payment. The investors tried hard to get the assured return but failed in their attempt to receive any money. It has been alleged by the complainants that only 5-10% of the project is completed in the span of 3-4 years. It was further alleged that the company could not sell out the units in the project without necessary sanction from the government authority.

3. Mr. Sanjay Manchanda, learned counsel for the petitioners while seeking interim bail stated that the petitioners never deliberately delayed the construction of the project and the delay is attributable to the statutory permissions and protests by farmers; that there was a sudden slump in the real estate market in the year 2014-15, the company felt the crash crunch and could not pay the assured return as per the agreed terms; that all the investors were paid their assured returns till March, 2015 and a lot of them also received the same till about November 2015; that the petitioners were arrested in September, 2016 but interim bail was granted to only one petitioner/ Sushant Muttreja; that when interim bail was granted for 45 days to the petitioner/ Sushant Muttreja, he did his best and showed his bonafide to revive the company by bringing more funds; that the petitioner/ Sushant Muttreja arranged a meeting to seek amicable solution with the customers which was successful in reaching a concrete proposal, however, for the

proposal to be effective, the MOU had to be signed with the investors in presence of both the petitioners but the investors and lawyers opposed the grant of bail to the petitioner/ Shekhar Muttreja and thus the meeting came to an end; that "Splendor Info Park Pvt Ltd" is completely owned by the petitioner company and the petitioner is already pursuing the said matter with the authorities to revoke cancellation; that the counsel is seeking grant of interim bail to both the petitioners as all the customers are awaiting some solution in order to receive the amount invested or at least the possession of the units against which they have invested in the company; that the investors insisted the petitioner to sign a MOU pertaining to refund which the petitioners can ascertain and confirm only after the Company and the petitioner enter into a legal MOU with the prospective investors who are ready to file a scheme of Revival; that the petitioners have already completed 75% of the formalities to file a detailed proposal and the presence of both the petitioners for merely 45 days is essential to comply with the rest of the terms as per the order dated 06.04.2017.

4. Mr. Mukesh Kumar, learned APP for the State strongly opposed the bail application and stated that the directors of the company induced the innocent public to invest their hard earned money in a project where the petitioners were not even the rightful owners; that the petitioners have misappropriated the assets and attempted to enrich themselves in an illegal manner; that only 5-10% construction work has been done on the project till date; that the amount collected by the company was infact transferred

rapidly to the account of sister firms; that when the petitioner/ Sushant Muttreja was granted interim bail, he had to go through several stages before the company’s operations could be revived, however, the Trial Court observed that the petitioner did not even cross the first hurdle as mentioned in Stage-1 that was to collect data of all the customers who wanted their investments back and customers who were willing to wait for construction to commence and also complete the data with regard to the financial and technical status of the company.

5. Learned counsel for the complainant and investors who appeared in the court adopted the arguments advanced by the learned APP for the State and opposed the bail applications.

6. I have heard learned counsel for the parties and have also perused the material available on record.

7. At this juncture, it is pertinent to state that an interim bail was sought by both the Directors of M/s Cosmic Structures Ltd. for the purpose of finding a way out as to how and in what manner assured returns can be paid to investors or in the alternative in what manner the complainants can be paid their entire amount invested by them in the company. To this application, the Special Judge granted interim bail on 06.04.2017 for 45 days only to the petitioner/ Sushant Muttreja so that the meeting with the investors could be attended by one of the Directors and also to find a solution by which the complainants and other investors could be returned their hard earned money. Thereafter, an application was filed by the

petitioner/ Sushant Muttreja seeking modification of order dated 06.04.2017 as the petitioner was in custody in a similar case in Agra Court praying that the interim bail granted should be counted from the date of his release from jail. The interim bail of the petitioner/ Sushant Muttreja had infact extended upto 11.07.2017, however, during this period the petitioner neither took any steps to inspire confidence among the investors/complainants nor finalized the draft MOU from the prospective Foreign Direct Investor.

8. During investigation, it was revealed that the amount collected by the company has been misappropriated and the same was diverted to purchase or to invest in other assets; that the Directors of Cosmic Structures Ltd. cannot collect money from the prospective investors without prior approval and necessary permission from concerned authority; that the Company stopped assured return from March 2015; that the money is collected from investors in the name of M/s. Cosmic Structures Ltd. whereas the land is allotted to M/s. Spendor Info Parks Pvt. Ltd.; that more and more complaints are being registered in EOW regularly.

9. From the above, it is evident that the accusations against the petitioners are serious in nature as the petitioners are stated to have cheated the complainants for a sum involving crores of rupees. The petitioners have neither handed over the possession of the units to the complainants nor paid the assured returns from March, 2015 as per the contractual relationship. Moreover, the winding up petition against the company has already been instituted before this Court and an Official Liquidator was appointed. Thus,

even if interim bail is granted to the petitioners, the Official Liquidator has assumed control over the assets of the company and the petitioners would not be in a position to take any action. It is pertinent to mention here that the petitioner/ Sushant Muttreja was granted interim bail by the Sessions Judge however, no productive or fruitful efforts were made by the petitioner to revive their project at that time. Also, if the petitioners were genuinely willing to complete or revive their project while one petitioner was out on bail then the petitioner/ Shekhar Muttreja could have given his power of attorney to someone to carry out the work on his behalf. The physical presence of the petitioner/ Shekhar Muttreja does not seem to be necessary to enable the execution of any document or for attending any meetings. In this backdrop, the contention of the counsel for the petitioner that it is imperative for both the petitioners to be present for discussions and meetings or make some arrangements for revival of the company, cannot be accepted and since the earlier opportunity granted by the Sessions Court have not been fructified, this court does not deem it appropriate to afford another opportunity to the petitioners on the same grounds as urged before the Sessions Judge. Also, considering the submissions made by learned counsel for the parties, looking to the facts and circumstances of the case, it would not be justified to enlarge a person on bail, when the gravity of the offence alleged is severe.

10. Before parting with this order, this Court would like to place it on record by way of abundant caution that whatever has been stated in this

order has been said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact arising for decision in the case which shall naturally have to be done by the Trial court.

11. Accordingly, the present petitions are dismissed.

SANGITA DHINGRA SEHGAL, J.

AUGUST 29, 2017
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