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

% Reserved on: 4th January, 2018
Decided on: 9th January, 2018

\+ **BAIL APPLN. 2471/2017**

SANJAY GAMBHIR .... Petitioner
Represented by: Mr.Dayan Krishnan, Sr.Advocate with Mr.Mohit Chaudhary and Mr.Kunal Sachdeva, Advocates

versus

THE STATE GOVT OF NCT OF DELHI .... Respondent
Represented by: Mr.Amit Gupta, APP for the State.
Mr.Siddharth Aggarwal, Advocate with Mr.Shri Singh, Ms.Maneka Khanna and Ms.Jhansi Dubey, Advocates for complainant.
ACP Rajiv Midha with SI Sanjeev Kumar, EOW, ND

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition the petitioner seeks anticipatory bail in case FIR No.53/2017 under Sections 420/406/120B IPC registered at PS EOW Delhi.

2. Learned counsel for the petitioner contends that even as per the contents of the FIR only a civil dispute is made out and no criminal offence can be said to be made out. The case of the complainant is that the payments were made in two trenches by different members of the family of the complainant and their business concerns. Admittedly out of ₹1,50,00,000/- initially pending in the year 2012, ₹1,17,00,000/- was paid back. It is the case of the complainant himself that further investment made

has not been paid. Be that as it may, the petitioner is not the Director of the company in which the investments were made. The complainant has already filed a civil suit before filing the complaint which fact has been concealed. There is no allegation that the petitioner siphoned or mismanaged the funds of the complainant. Only to create pressure on the petitioner the FIR has been got registered which is an abuse of the process of law. It is a case of running account and the last payment was in the year 2012. Belatedly action has been taken by getting the FIR registered. In any case the petitioner has joined the investigation, he has roots in the society and will always be available for investigation as and when directed and to face trial if required. Learned counsel for the petitioner relies upon the decisions in *Binod Kumar & Ors. Vs. State of Bihar & Anr. (2014) 10 SCC 663 and International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and Ors. Vs. Nimra Cerglass Technics Private Limited & Anr. (2016) 1 SCC 348*.

3. Learned APP for the State submits that the version of the petitioner that he was not associated with the company M/s. DD Global Capital Pvt. Ltd. is incorrect because he holds 96.6% shares in the company. The actual Directors of the company are the petitioner's employees who have no knowledge of the running of the company and all actions are being taken by the petitioner. Further petitioner is also the authorized signatory of M/s. DD Sales Corporation, a partnership firm. Thus all actions in the firm and company of the petitioner's family are being conducted by the petitioner.

4. Assisting the learned APP, learned counsel for the complainant submits that the petition is liable to be dismissed for concealment of material facts and mis-statement of facts. Petitioner has stated in the petition that he

is neither the Director nor the shareholder of M/s. DD Global Capital Pvt. Ltd. (formerly known as M/s. DD Township Ltd.), however as per the investigation, the petitioner is 96.62% shareholder of the said company. The contention of the petitioner that he was in custody from March 2012 to December 2012, hence there could be no inducement by him to the complainant is also incorrect for the reason the meeting took place in January and February of 2012. The petitioner has not disclosed that besides the present FIR he is involved in 39 other cases. Though the petitioner stated that he has been travelling from 10th November, 2017 to 26th November, 2017 and did not join the investigation, however he was attending marriages and had sworn an affidavit at Delhi on 14th November, 2017. In view of the serious allegations against the petitioner no anticipatory bail be granted to him.

5. The above-noted FIR was registered on the complaint of Smt. Kailash Devi Khanna and others against the petitioner, Rajeev Gambhir, Reena Gambhir, Tarun Kumar and Narender Kumar. Rajeev Gambhir and Reena Gambhir are partners of firm M/s. DD Sales Corporation whereas Tarun Kumar and Narender Kumar are directors of M/s. DD Township Ltd. (now known as M/s. DD Global Capital Pvt. Ltd.). Petitioner Sanjay Gambhir is the authorized signatory of M/s. DD Sales Corporation and holds 96.6% shares in M/s. DD Global Capital Pvt. Ltd. It is the case of the complainant that in the year 2005 the petitioner, who was their relative, along with his father Surender Gambhir and Rajeev Gambhir approached them and lured them to invest in their business representing that their business of finance, real estate, car dealership and other allied businesses were showing heavy profits. The complainants were assured of a return @ 20% per annum

compounded quarterly on the amount invested. Under the said representation the complainants invested ₹1.58 crores through cheques between the years 2005 to 2008. Out of the said amount Smt. Kailash Devi Khanna invested ₹24 lakhs and ₹10 lakhs; Vivek Khanna ₹48 lakhs; M/s. Associated Garments ₹12,50,000/-; M/s. Great Eastern Sourcing Company ₹50 lakhs and M/s. Upasana Exports ₹14 lakhs.

6. The petitioner and other accused gave return only @ 12% per annum contrary to the promised rate of 21% per annum assuring that the payment would be regularized later on. In the month of January and February, 2012 petitioner along with his wife Reena Gambhir approached the complainant and represented that his firm M/s. DD Sales Corporation comprised of his family members and it was under his control. As a result of the dispute they were unable to get sufficient returns and they were diversifying their business and had floated a different company namely M/s. DD Township Ltd. later renamed as M/s. DD Global Capital Pvt. Ltd., which would also be under the exclusive control of the petitioner. The petitioner returned a sum of ₹1.13 crores to show his bona-ides from the personal account of his wife Reena Gambhir, though the investments of the complainants were in the firm M/s. DD Sales Corporation. The petitioner concealed the fact that FIR No.43/2011 had been registered against the company M/s. DD Township Ltd. and represented that his project was going on very efficiently and he was busy in the said project. Due to the misrepresentation the victims/ complainants invested a further sum of ₹1,17,59,854/- in M/s. DD Township Ltd. through cheques. The petitioner was one of the Directors of M/s. DD Township Ltd. till 2008 whereafter he resigned and appointed Narender Kumar and Tarun Kumar as Directors of the company. The petitioner failed

to return the money despite the fact that he was the major shareholder of the company having 96.62% shares. The office of the company at 226, Basement, Sant Nagar, East of Kailash remain closed and thus no notices could be served on the petitioner.

7. As per the status report petitioner was issued three notices on 14th November, 2017, 18th November, 2017 and 29th November, 2017 but he did not join the investigation and pursuant to the direction of this Court joined the investigation on 28th November, 2017 and 4th December, 2017 but failed to provide the required documents relating to utilization of the money invested by the complainant.

8. From the contents of the FIR it is evident that even though the petitioner was not partner in M/s. DD Sales Corporation nor a Director in M/s. DD Global Capital Pvt. Ltd., however the entire affairs of the firm and the company were controlled by him. On the representation of the petitioner the complainants first invested money of which major amount was received back inducing them to further invest the money. Though unrealistic returns were assured, however the petitioner failed to return the principal amount as also the realistic interest. Even in the decision relied upon by the learned counsel for the petitioner Supreme Court noted that there is a distinction between cheating and breach of contract which distinction is to be inferred from the intention of the accused at the time of alleged inducement. No doubt, merely by not fulfilling the promise no criminal liability can be fastened but where dishonest deception is practiced inducing a person to part with the property, ingredients of offence punishable under Section 420 IPC are attracted. Since the petitioner is the main person who induced the complainants to invest and controls the entire affairs and the money trail is

yet to be found out, this Court finds no ground to grant anticipatory bail to the petitioner.

9. Petition is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 09, 2018
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