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

Date of decision: 06.12.2019

\+ BAIL APPLN. 3023/2019

BIJENDER SINGH LATHER ..... Petitioner

Through Mr.Siddhartha Luthra, Sr. Adv. with Mr.Jasbir Malik, Mr.Shantanu Sharma & Mr.Neeraj Khapra, Advs.

versus

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

Through Mr. Hirein Sharma, APP for State. SI Kamal Kohli PS EOW.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (ORAL)

Crl. M.A. 42063/2019

1. Allowed, subject to all just exceptions.

2. Application is disposed of.

Bail Appln.3023/2019 & Crl.M.A. 42062/2019

3. Vide the present petition, the petitioner seeks direction thereby to grant anticipatory bail to the Petitioner in FIR No.59 of 2019 dated 04.04.2019 Police Station, Economic Offences Wing, Mandir Marg, New Delhi under Sections 406, 420 & 120-B of IPC.

4. The brief facts leading to filing of the said petition are that Prabhu Shanti Real Estate Pvt. Ltd. (hereinafter referred to as "*Company*"), a private limited company incorporated under the Companies Act, 1956 in the year 2014, acted as a guarantor to a loan facility obtained by one of the sister concern Society of the Company i.e. Prabhu Dayal Memorial Religious Educational Association. The said Society defaulted in repayment of the loan to the lending Bank in pursuance to which the lending bank filed an application under section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal. The said Tribunal vide order dated 13.06.2018, initiated Corporate Insolvency Resolution Proceedings against the Company and appointed an Interim Resolution Professional to take over the management of the Company. However, the Petitioner made all endeavours to deliver possession of the flats to the Home Buyers including the complainant. The constructions of flats was completed up to 75-80% by June 2018, however, the Petitioner lost control of the company vide insolvency admission order passed by the NCLT, Delhi on 13.06.2018 against the Company. Thereafter, the Company preferred an Appeal before the National Company Law Appellate Tribunal (NCLAT) against the order dated 13.06.2018 passed on the ground that the Company was willing to

settle the matter with the Lending Bank. But the Complainant, Smt.Suman Solanki filed the Complaint against the Company after passing of the order dated 13.06.2018 by the NCLT, i.e. when the Petitioner or any other Director of the Company was not in control of the management of the company. However, Petitioner though being a minority shareholder, took all necessary and active steps to regain control of the company in order to complete the construction of the real estate project and to deliver possession to the Complainant. In an endeavour to regain control of the Company, the Petitioner in his personal capacity, settled with the Lender Bank namely AU Small Finance Pvt. Ltd. vide settlement agreement dated 24.07.2018 and paid an amount of Rs. 2,32,00,000/- to the lending bank as part of the settlement amount. The said settlement agreement executed between the Petitioner and the lending bank was relied by the Petitioner before the NCLAT. However, the said tribunal refused to withdraw the Insolvency Proceedings against the Company, as there were other financial creditors and a Committee of Creditors had also been constituted by the Interim Resolution Professional. However, several homebuyers including the Complainant filed a Writ Petition before the Hon'ble Supreme Court of India bearing number W.P.(C) 914/2018 and vide its order dated 03.12.2018, disposed of the said Writ Petition in view of an out of Court Settlement being entered into between the petitioners therein and the Company. On 08.02.2019, the homebuyers filed an M.A.No.286 of 2019 in W.P.(C) No.914 of 2018 and attempted to project as if there was not any settlement but Supreme Court of India out rightly rejected the application for modification of the order dated 03.12.2018.

5. Mr.Siddharth Luthra, learned senior counsel appearing on behalf of the petitioner submits that FIR No. 59/2019 got registered against the petitioner along-with other accused at the behest of a Complaint filed by the Complainant, Smt.Suman Solanki with Police Station: EOW, Mandir Marg. The Complainant is one of the home buyers who had purchased a flat in the Project "PDM HI-TECH HOMES" of the Company. After filing of the Complaint and during the pendency of investigation, the Complainant also filed a Writ Petition before this court bearing W.P(Crl.) No. 349 of 2019, by suppressing and concealing several relevant and material facts. The Complainant had not made the Petitioner a party to the said Writ Petition and the Petitioner did not get an opportunity to address this Court with correct and true facts. When Petitioner got aware of the fact that a Writ Petition has been filed by the complainant against the Company and the

Petitioner, the petitioner filed an impleadment application in the said Writ Petition and the same was allowed vide order dated 12.04.2019. Since the registration of FIR, the Petitioner appeared before the investigation authorities i.e. Economic Offences Wing police station at Mandir Marg on 30.03.2019, 01.04.2019, 22.08.2019, 05.10.2019, 12.10.2019 and has co-operated with the authorities at every stage including providing all documentations as and when asked for by the authorities, to ensure a fair and just investigation of the case.

6. He further submits that on 01.08.2019, the petitioner proposed the settlement in terms of the proposal and the representative of the home buyer in principle agreed to the same. The said Writ Petition was disposed of by this Court vide Order dated 07.11.2019, thereby allowing the investigation to take its own course. The Company through the Petitioner, submitted a proposal for settlement and resolution before the fifth meeting of Committee of Creditors of the Company held on 21.09.2019 constituted by the Resolution Professional.

7. He also submits that if the anticipatory bail is granted to the petitioner, he can pursue the proceedings pending before the various authorities and courts and it would be in the interest of the buyers so that he

would be able to complete the project.

8. On the other hand, learned APP appearing on behalf of the State submits that during the course of investigation, all the bank accounts of accused company and other directors have been freezed to stop the further movement of invested amount of the investors. Embargo proceedings have been initiated upon the personal properties owned by the accused company and its directors. In order to prevent the escape of the accused Directors, necessary measures have been taken against all five Directors of the accused company. During investigation, Sh. Abhishek Anand, IRP appointed by NCLT Court, has joined the investigation and provided the 'Forensic Audit Report' of the project in question wherein the following observations were found:-

- Advance of Rs. 393 Lacs is outstanding from Bhagwati Tiles against a total purchase of Rs. 259.92 Lacs during June 2016 to June 2018.
- Bogus invoices raised on the same date amounting to Rs. 125.24 Lacs during June 2016 to June 2018 from HRKH Builders Pvt. Ltd.
- Accused company used to pay Monthly Director remuneration to the tune of Rs. 13.90 Lacs per month during FY 2016-17 and Rs. 8.51 Lacs per month during FY 2017-18. Whereas, company reported loss

of Rs. 1,91,76,525.81/- in FY 2016-17 and further years.

- Bogus and dubious cash payments of Rs. 169.16 Lacs during June 2016 to June 2018 as Labour Charges and Rs. 234 Lacs against purchase of Rodi during June 2016 to June 2018.
- Accused company has defaulted to pay off government duty and taxes amounting to Rs. 73.90 Lacs, which are as follows:
    - ✓ PF of Rs. 4,80,662/- has not been paid since Oct 2016.
    - ✓ ESIC of Rs. 1,01,729/- has not been paid since Oct 2016.
    - ✓ Balance TDS of Rs. 68,08,034/- has not been paid since April 2017-18.
- Accused company does not maintain Stock register, resultantly the actual position of stock and raw material regarding inward and outward stock cannot be ascertained.

9. The petitioner/accused Bijender Singh is one of the key management personnel and authorized signatory in this company. He has received an amount of Rs. 66 Lac per annum as salary during FY 2015-16 and 2016-17, as director, from the alleged company. Whereas, the company reported loss of Rs. 1,91,76,525.81/- in FY 2016-17 and further years. Inter related parties transactions were done with Bhagwati Tiles, Bharti Techno Medical

Enterprises, AMI Prabhu Developers Pvt. Ltd., PDM Religious and Educational Association, Sangam Infra Estates Pvt. Ltd. and HRHK Builders Pvt. Ltd. without any legal agreement for services rendered by them. However, no legal agreement was found executed between accused company and other parties for short term loans and advances of Rs. 11,71,96,308/- in FY 2015-16. As per reply from DTPC, Chandigarh, the alleged company granted licence No. 179 of 2007 on 25.04.2007 for 8.97 Acres of land at Bahadurgarh, Haryana for total of 402 flats. The alleged company further applied for revised building plans on 16.12.2015 for total of 430 flats, which was approved by DTCP on 19.01.2016. Major changes in Tower-6 and Tower-7, where 28 flats were added and in Tower-7, 9th and 10th floors consist of 8 flats which do not exist in previous plan approved by DTCP on 25.04.2007 amended on 16.12.2015. Flat No. T-7/A-9 in Tower-7 at 9th floor was booked by homebuyer Sh. Balwant Singh on 28.02.2013 by paying advance money of Rs. 4,00,000/- through Axis Bank Cheque No. 081605. Later, this flat was sold by builder to homebuyer Sh.Hawa Singh Joon on 25.06.2014, who paid advance of Rs. 2,00,000/- through Canara Bank cheque No. 632184. It shows that accused company, M/s Prabhu Shanti Real Estate Pvt. Ltd. sold Flat No. T-7/A-9 in Tower-7 at 9th floor before approval granted by DTCP.

10. Learned APP further submits that during the course of investigation, some of the victims have been examined and their statement have been recorded and notices under section 41A Cr.P.C. were issued to alleged person namely Bijender Singh Lather, petitioner herein, including Joginder Singh Lather, Ram Niwas, Sajjan Singh Beniwal and Bhawana Lather, to which the petitioner joined the investigation but he has not provided any specific information which may help the investigation to get the trail of the investment of the complainant and tried to shift the liabilities to other directors. Therefore, custodial interrogation of the petitioner/accused is required for the following reasons:-

1. Investigation of the case is at initial stage.
2. Accused did not provide any relevant documents showing utilisation of investment of complainant on proposed project.
3. To unearth the conspiracy hatched by the accused persons and his associates.
4. To recover the cheated amount and to trace the money trail.
5. To decide the role of other persons/company, who are the beneficiaries of the cheated amount as per bank account statement

of alleged company.

11. Keeping in view the serious allegations mentioned above against the petitioner, who has played key role in the present case and due to the material documents which are required to be seized from the petitioner, for which custodial interrogation is required, therefore, I am not inclined to grant anticipatory bail to the petitioner. The petition is dismissed.

12. Pending applications also stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 06, 2019
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