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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 04th April, 2019

+ BAIL APPLN. 903/2018 and CrI. M.A 7413/2018

SUNIL GANDHI

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Advocate
with Mr. Vivek Kohli, Mr. Vivek Singh, Mr.
Kushal Mangal, Mr. Bhavit Yadav and Ms.
Dhristi Ahluwalia, Advocates

versus

STATE

..... Respondent

Through: Mr. Sanjay Lao, ASC with Mr.
Amit Ahlawat, APP with ACP K. Ramesh,
Insp. Vinod Gandhi and SI Harpal Madan

Mr. Tanveer Ahmed Mir and Mr. Laksh
Khanna, Advocate for complainant
Mahinder Kr. Soni

Mr. Sanjay Abbot, Advocate for
complainant / Spirewoods Resident Assn.

Mr. Satya Prakash Yadav, Advocate for the
complainant Vishvendra

+ BAIL APPLN. 2458/2018 and CrI. M (Bail) 1643/2018 and
CrI. M.A. 34478/2018

MAJ. (RETD.) SURENDRA KUMAR HOODA Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate
with Mr. Madhav Khurana and Mr. Varun
Singh Thapa, Advocate

versus

STATE

..... Respondent

Through: Mr. Sanjay Lao, ASC with Mr. Amit Ahlawat, APP with ACP K. Ramesh, Insp. Vinod Gandhi and SI Harpal Madan

Mr. Tanveer Ahmed Mir and Mr. Laksh Khanna, Advocate for complainant Mahinder Kr. Soni

Mr. Sanjay Abbot, Advocate for complainant / Spirewoods Resident Assn.

Mr. Satya Prakash Yadav, Advocate for the complainant Vishvendra

+ BAIL APPLN. 2459/2018 and Crl. M. (Bail) 1644/2018, Crl. M.A. 34479/2018 and Crl. M.A 47549-47550/2018

MAJ. (RETD.) SURENDRA KUMAR HOODA Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Madhav Khurana and Mr. Varun Singh Thapa, Advocate

versus

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..... Respondent

Through: Mr. Sanjay Lao, ASC with Mr. Amit Ahlawat, APP with ACP K. Ramesh, Insp. Vinod Gandhi and SI Harpal Madan

Mr. Tanveer Ahmed Mir and Mr. Laksh Khanna, Advocate for complainant Mahinder Kr. Soni

Mr. Sanjay Abbot, Advocate for complainant / Spirewoods Resident Assn.

Mr. Satya Prakash Yadav, Advocate for the complainant Vishvendra

+ BAIL APPLN. 2460/2018 and CrI. M(Bail) 1645/2018 and
CrI. M.A. 34480/2018

MAJ. (RETD.) SURENDRA KUMAR HOODA Petitioner
Through: Mr. Dayan Krishnan, Sr. Advocate
with Mr. Madhav Khurana and Mr. Varun
Singh Thapa, Advocate

versus

STATE Respondent
Through: Mr. Sanjay Lao, ASC with Mr.
Amit Ahlawat, APP with ACP K. Ramesh,
Insp. Vinod Gandhi and SI Harpal Madan
Mr. Tanveer Ahmed Mir and Mr. Laksh
Khanna, Advocate for complainant
Mahinder Kr. Soni
Mr. Sanjay Abbot, Advocate for
complainant / Spirewoods Resident Assn.
Mr. Satya Prakash Yadav, Advocate for the
complainant Vishvendra

+ BAIL APPLN. 905/2018 and CrI. M.A. 7422/2018 and CrI.
M.A. 346435/2018

SUNIL GANDHI Petitioner
Through: Mr. Ramesh Gupta, Sr. Advocate
with Mr. Vivek Kohli, Mr. Vivek Singh, Mr.
Kushal Mangal, Mr. Bhavit Yadav and Ms.
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Mr. Sanjay Abbot, Advocate for complainant / Spirewoods Resident Assn.

Mr. Satya Prakash Yadav, Advocate for the complainant Vishvendra

+ BAIL APPLN. 913/2018 and Crl. M.A. 7456/2018

SUNIL GANDHI

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Advocate with Mr. Vivek Kohli, Mr. Vivek Singh, Mr. Kushal Mangal, Mr. Bhavit Yadav and Ms. Dhristi Ahluwalia, Advocates

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Mr. Sanjay Abbot, Advocate for complainant / Spirewoods Resident Assn.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Petitioner Surendra Kumar Hooda was arrested in the course of investigation in three cases viz. first information report (FIR) nos.114/2016, 116/2016 and 64/2016, now under investigation with Economic Offences Wing (EOW) of Delhi Police. His applications for release on bail have been declined by the court of Sessions. By the captioned petitions instituted by him, he seeks orders for release on bail from this court. The allegations in the three said FIRs also attribute role to petitioner Sunil Gandhi. He had applied for release on anticipatory bail but his requests in the context of three cases have been declined by the court of Sessions. By the three other captioned petitions, he seeks such orders from this court. Since the three cases against the two petitioners arise out of certain common set of facts, their contentions being similar, all the applications have been heard together and are being disposed of through this common order.

2. M/s. A.N. Buildwell Pvt. Ltd. is a company registered under the Companies Act, 1956 having its registered office at 504, 5th Floor, Bhikaji Cama Bhawan, 11, Bhikaji Cama Place, New Delhi-110066. It has concededly been engaged in the business of real estate development. Petitioners Maj. (Retd.) Surendra Kumar Hooda and Sunil Gandhi were concededly promoters and directors of the said company, they claiming to have resigned from the said positions in 2014-2015. Nonetheless, they have continued to control substantial share in the said company. On the basis of licences obtained by the company in 2010-2011, it had floated two projects, one called Spire Wood and the other called Spire Edge, each to be developed in

different plots in district Gurugram (Haryana), the former for residential units and the latter to comprise of commercial or office space units. Pursuant to the publicity of the said projects made, a large number of public persons approached the company and made investments.

3. In the wake of delay in the completion of the said projects, and revelations statedly made of mis-representation vis-a-vis the prior approvals and the availability of lands free from all encumbrances, and certain acts of commission indulged in dishonestly resulting in siphoning of funds by the company and its directors, a large number of investors approached the police with their respective complaints, such grievances having, in turn, resulted in registration of the three cases viz. FIR no.114/2016 in police station Sarita Vihar under Section 420 read with Section 34 of Indian Penal Code, 1860 (IPC), on the complaint of Shikha Sadh; FIR no.116/2016 also of police station Sarita Vihar for offences under Sections 406, 420, 34 IPC on the complaint of Renuka Kulkarni and FIR no.64/2016 of police station Economic Offences Wing (EOW) for offences under Sections 406, 409, 420, 120-B IPC. All the said three FIRs were eventually taken over for investigation by EOW.

4. A report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.PC) dated 19.12.2017 was submitted in the context of FIR no.114/2016 in the court of Chief Metropolitan Magistrate, South-East at Saket seeking prosecution of petitioner Surendra Kumar Hooda for offences under Sections 406, 409, 420, 120-B, 34 IPC, the investigation concerning role of others being still

pending. It is not disputed that the Magistrate took cognizance on the said charge-sheet, having issued process and secured the presence of Surendra Kumar Hooda (who was in judicial custody at that point of time). The case, however, is still at the threshold, some applications of certain complainants and the subject of scrutiny in the context of compliance with Section 207 Cr. PC being pending.

5. Surendra Kumar Hooda was arrested on 20.09.2017 in case FIR no.114/2016. While he was in custody in the said case, he was also formally arrested in the other two FIRs on 31.10.2017. He had applied for release on bail (by application nos.1873-5/2017) in the context of the said three FIRs, his applications being dismissed by a common order passed by an Additional Sessions Judge on 18.12.2017. On 19.12.2017, the charge-sheet in case FIR no.114/2016 had come up before the court of cognizance.

6. The petitioner Surendra Kumar Hooda approached this court by similar bail applications in the three cases but opted to withdraw the same on 22.12.2017, taking liberty to approach the court of Sessions yet again. His fresh applications were granted by the court of Sessions by almost identical orders passed by another Additional Sessions Judge (Vacation Judge) on 29.12.2017, taking note, *inter alia*, his age (76 years), the ailments suffered, the period of custody undergone, “*deposit*” of Rs.6.10 Crores by him and the fact that charge-sheet had already been filed. The said order was corrected by the sessions court on 30.12.2017, on his own application, to take note of the fact that the said amount had actually not been deposited but only proof of funds to

that extent had been furnished to the official liquidator for revival of the company.

7. The State felt aggrieved by the orders releasing Surendra Kumar Hooda on bail and challenged the same by petitions (Crl. MC 3335/2018, 3336/2018 and 3360/2018) and was joined by some of the aggrieved parties (investor complainants) filing their own independent petitions. All the said petitions were disposed of by a common order by this court rendered on 26.07.2018, the orders of release on bail in favour of Surendra Kumar Hooda having been set aside and vacated, with consent, it having been conceded that the same were non-speaking, the background facts not having been taken note of nor the submissions of either side dealt with. The issue of release on bail of the said petitioner was remitted to the court of Sessions, protection of the order earlier granted, however, having been allowed to continue.

8. The Additional Sessions Judge heard the parties again and by a detailed order passed on 09.10.2018 dismissed the applications for bail taking note, *inter alia*, of the facts against the backdrop of which these cases have come up for investigation and action under the criminal law.

9. On the other hand, there is material to show that petitioner Sunil Gandhi had failed to make himself available to the investigating agency, having become elusive. The investigating officer was constrained to approach the Chief Metropolitan Magistrate who issued non-bailable warrant against him on 07.12.2017. The presence of Sunil Gandhi could not be procured despite such process and consequently, the investigating officer moved application in the court

of Magistrate praying for issuance of proclamation under Section 82 Cr. PC. which was granted on 11.01.2018, returnable for 26.02.2018. Against the said backdrop, Sunil Gandhi moved application for anticipatory bail before the court of Sessions. He was granted interim protection against coercive steps by an Additional Sessions Judge by order dated 16.02.2018, which protection continued for sometime. However, his applications (nos.234/2018, 236/2018 and 237/2018) in the context of the three cases were dismissed by the said court by a common order passed on 31.03.2018, the submission of the investigating agency to the effect that custodial interrogation was required having been accepted.

10. Thereafter, the petitioner Sunil Gandhi approached this court by the three captioned petitions. Noticeably, at that point of time, the other petitioner Surendra Kumar Hooda was on bail granted by the court of Sessions, the cancellation of which orders was being prayed by the State and others through the petitions referred to earlier. Against this backdrop, a similar protection was accorded to Sunil Gandhi against arrest.

11. The charge-sheet which has been filed against Surendra Kumar Hooda in FIR no.114/2016, and the status reports filed by the investigating agency in the context of all the three FIRs (i.e. 114/2016, 116/2016 and 64/2016) from time to time, *inter alia*, reveal that as many as 112 complaints had been received regarding Spire Wood project which involves investments of more than Rs.50 Crores. A large number of investors in the other project (i.e. Spire Edge) are also similarly aggrieved. It was conceded at the hearing by the counsel for

the petitioners that the residential project (Spire Wood) is nowhere near completion, the date of completion as represented to the investors having long lapsed. On the other hand, there is some material to show that the commercial project (Spire Edge) had seen some development, a few blocks still to be developed, at least three blocks (nos.B, C & D) having been readied (to an extent), the claim of the petitioners being that all the units in the said block have already been handed over to the respective allottees / investors.

12. It is the contention of the petitioners that the company had faced some financial constraints and on that account it had been unable to complete the two projects within time and that, in order to show *bonafide*, the company court had been approached by a petition under Sections 391 and 393 of the Companies Act, 1956, through Company Petition no.704/2014, in the course of consideration of which a revival scheme has been proposed so that the projects could be completed with the aid and assistance of another company (Alfa Corp. Development Pvt. Ltd.) which had shown interest and come up as potential investor to carry the projects forward. Reliance is placed on orders dated 16.10.2018 in Company Application (M) 115/2016 and Company Application 332/2018 and order dated 08.03.2019 in Company Petition no.6/2019. The revival scheme which, the petitioners claim, has the approval of the official liquidator and the backing of a majority of the stake holders, is expected to come up before the Company court in near future to bring succor and relief to the affected parties i.e. the complainants herein.

13. But, the investigating agency through the Additional Standing Counsel pointed out that the three cases from which the present petitions arise come from a backdrop showing web of deceit involving a series of transactions that reflect the intent to defraud a large number of customers, the funds collected having been siphoned off intentionally so as to dishonestly appropriate them for purposes other than those intended to be used at the time of receipt from the investors, the conduct of the petitioners and others connected to them, particular name of Ashish Bhalla referred in this context, being of total non-cooperation with the probe. It was submitted that given the magnitude of the frauds which have been committed, the Commissioner of Police has been constrained to constitute a Special Investigation Team (SIT) which is headed by an Assistant Commissioner of Police (ACP) and supervised by a Deputy Commissioner of Police (DCP).

14. The status reports submitted by the ACP of the SIT of EOW reveal, *inter alia*, that there is evidence gathered to show that when the investments were invited from the public at large, no approvals had been obtained, in terms of the conveyance deeds, from HSIIDC, the land being under mortgage with two banks, the representation to the investors on the contrary being that the subject property was free from all kinds of encumbrances, liens, etc. The evidence which has been gathered thus far reveals that 40% of the stake in the company is controlled by M/s. Schleicher Intec Pvt. Ltd. which, in turn, is owned by the petitioner Surendra Kumar Hooda, 10% of the stake being controlled by the petitioner Sunil Gandhi. In the wake of allegations

of fraudulent diversion of funds, the investigating agency issued orders freezing the bank accounts (14 in number) of the company, the reports received from the concerned banks revealing there being insignificant credit balances.

15. The further probe has brought out that the amounts collected from the investors in the above mentioned two projects have been dishonestly diverted, *inter alia*, by the two petitioners to certain entities in which they have either direct or indirect control. This is illustrated by the transfer of Rs.4 Crore to M/s. Green Edge Infrastructure Pvt. Ltd. in March 2010, transfer of Rs.3 Crores to M/s. J.S.M.S. Holdings Pvt. Ltd. in March 2010 and transfer of Rs.8.40 Crores in January, 2011 to M/s. Inspire Infraventures Pvt. Ltd. There is also material available to show that the amount transferred to Green Edge was further transferred to M/s. Vera-Edu Infra Pvt. Ltd. which is in the control of Sandeep Hooda, son of petitioner Surendra Kumar Hooda. Though it does appear that the said amounts have eventually come back to M/s. A.N. Buildwell Pvt. Ltd., the very transfers under the cover of land development agreements is questionable.

16. Similarly, an amount of Rs.18.60 Crores is stated to have been transferred, in different tranches, from the account of M/s. A.N. Buildwell Pvt. Ltd. to the account of another entity M/s. Charmswood Realtech Pvt. Ltd., a company with which the petitioner Sunil Gandhi has a clear connection, its office being at the same location as is used by the said petitioner, the persons shown as shareholders being his close associates. The amount thus transferred to Charmswood, in turn, seems to have been passed on further to three different companies viz.

M/s. B.S. Infosolutions Pvt. Ltd., M/s. Punyabhoomi Real Estate Pvt. Ltd. and M/s. Devlok Real Estate Pvt. Ltd. in the sum of Rs.13.09 Crores, Rs.1.97 Crores and Rs.1.65 Crores respectively. The said companies, the evidence collected so far shows, have further passed on the said money to different entities, there being no cogent explanation for the same.

17. The evidence collected also shows that the amounts which were transferred from the bank accounts of M/s. A.N. Buildwell Pvt. Ltd. to the three companies with which petitioner Surendra Kumar Hooda has connection were authorised by Sunil Gandhi. Conversely, the amounts which were transferred to the three companies with which Sunil Gandhi has connection were authorised by Surendra Kumar Hooda and Ashish Bhalla.

18. The evidence which has been collected *prima facie* further shows that a large number of public persons have been persuaded by false representations to part with money, the amounts collected being quite substantial running into hundreds of crores of rupees. The money which was collected for purposes of development of the two projects was unauthorisedly diverted and transferred to other companies of the petitioners and their associates, this adding to it the colour of mis-appropriation. Since the investors had handed over their money for the specific purpose of developing the projects where they were to receive the possession of units (residential or commercial), the diversion of funds resulting in the company not being in a position to carry forward the development work which was consequently delayed

inordinately, or indefinitely, the allegations of criminal breach of trust seem to be well founded.

19. The learned counsel for the petitioner Sunil Gandhi was at pains to argue that the facts which have been brought out through the investigation reports (tentative or final) do not make out a case of offence under Section 409 IPC, his argument being that none of the persons shown to be involved are public servants. He placed reliance on *R. Venkatkrishnan vs. Central Bureau of Investigation*, (2009) 11 SCC 737, *Raghunath Anant Govilkar vs. State of Maharashtra and Ors*, (2008) 11 SCC 289 and *Central Bureau of Investigation vs. Ramesh Gelli and Ors*, (2016) 3 SCC 788.

20. In the considered view of this court, the reliance on the above-said three decisions in support of the above mentioned proposition is misplaced. In none of the said cases, it has been held that the offence under Section 409 IPC cannot be attracted unless the accused person is a public servant or, further, that the other positions mentioned in the said penal clause (i.e. banker, merchant, factor, broker, attorney or agent) must be of a person who is also a public servant. Noticeably, the said cases concerned offence of criminal breach of trust allegedly committed by public servants and the observations made therein have to be understood in that light.

21. The persons accused here, and that include the petitioners before this court, are merchants (or their agents) vis-a-vis the complainants whose money they had collected for specific purposes but which money was diverted and appropriated, in breach of trust for ulterior purposes and fraudulently. In these circumstances, the

argument that the offence under Section 409 IPC is not attracted here or that the case involves lesser offences of cheating (Section 420 IPC) or criminal breach of trust (Section 406 IPC) only, must be rejected.

22. The revival scheme may be under consideration of the Company Court. It may be that pursuant to the first order of the Company Court in its respect, the meetings of the stake holders may have evinced approval by majority of different set of stake holders. But then, it was pointed out that the investors have given indication of their interest in the revival scheme, based on aid and assistance of another potential investor propped up by the petitioners, with reservations expressed by the majority seeking modifications. It is still uncertain as to what shape such revival scheme would take and as to when dividends might be reaped by anyone from such scheme. From the perspective of the investors, they continue to be in lurch, there being no clear time-lines as to when they would have either their money refunded or the fruits of their investments handed over to them.

23. It was pointed out, and this is crucial, that in the scheme (para 15.7), it was indicated that upon its coming into effect all action in law, including criminal, against the company, its directors (including former) and officers were to come to a standstill (stayed *sine die*). It is the contention of the investors (who intervened to object to the prayer in these petitions) that the above clause reveals the real intent i.e. to escape the criminal process. This apprehension cannot be said to be unfounded.

24. It was also pointed out at the hearing that though the evidence so far collected would show that all the directors of the company and

others related thereto have been in league with each other, they have been trying to evade the process by shifting the blame on to each other. This was illustrated by reference to the submissions made on behalf of the petitioner Sunil Gandhi at the time of consideration of his bail applications leading to order dated 31.03.2018 of the Additional Sessions Judge, and by Ashish Bhalla at the time of consideration of his bail application (no.1612/2017) which was dismissed by order dated 11.10.2017 of another Additional Sessions Judge. It was pointed out that while Sunil Gandhi would accuse Ashish Bhalla for the misdemeanor, Ashish Bhalla on his part would accuse Sunil Gandhi of entire responsibility.

25. The petitioners argued that the company M/s. A.N. Buildwell Pvt. Ltd. had earned profits to the tune of over Rs.40 Crores, placing reliance on certificate dated 06.02.2018 of a chartered accountant. It is their contention that the monies which were transferred to the various entities were for purposes of land development (and land procurement), drawn from such profits, there being no act committed to divert funds which have been collected from the complainant investors. This *ex facie* cannot be believed for the simple reason that but for such diversions, the accounts of the company would not have become empty. It is the scarcity of the funds thereby created which has led to the work of development of the two projects being stalled fraudulently.

26. In *Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation*, (2013) 7 SCC 439, the Supreme Court observed :

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

27. Further, in *State of Gujarat vs. Mohanlal Jitamalji Porwal and Anr.*, (1987) 2 SCC 364, the Supreme Court observed :

"5. The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest."

28. In *Neeru Yadav and another vs. State of U.P.*, (2014) 16 SCC 508, in the context of a jurisdiction under Section 439 Cr. PC, the Supreme Court, *inter alia*, observed that "(a)ccent on individual liberty cannot be pyramided" to bring "chaos and anarchy" to the society, "the liberty" of an individual being "not absolute", the "collective wisdom" of the society through process of law permitted to deprive the offender of such liberty in the interest of "the societal order".

29. In similarly placed fact-situation, in another case reported as *Sunil Grover vs. State*, 2012 SCC Online Del 3539, a co-ordinate bench of this court had observed, *inter alia*, thus :

"12. ...the petitioner floats advertisements and invites the offers from the members of the public to invest money in their schemes by promising them lucrative returns at regular intervals. He is able to gain their confidence and cheat them of their hard-earned money ... This kind of activity ultimately shows a great deal of deliberation, preparation and operation which can be done only by an intelligent person and this whole exercise has been rightly observed by the learned Sessions Judge to be actuated by a mentality "to get richer overnight" at the instance of the general public or investors. I would say that this is a mentality of a class of persons who have the capacity and the temerity to lead a lavish life and create assets at the miseries of the general public by making them invest their hard earned money with them. It will send a wrong signal in case the bail is granted to such persons. This tendency is to be curbed by denying the benefit of bail to such persons..."

30. The scheme brought before the Company Court in the company petition filed in 2014 seems to be more of a ruse presented in an endeavour to buy time. The investors cannot wait indefinitely. Even if it were to be taken as an endeavour made to make amends, it cannot detract from the fact that serious crimes were committed in the past to bring the company to a position where it could not carry forward the two projects on account of financial crunch intentionally created.

31. Having regard to the gravity and seriousness of the crimes involved here, the impact thereof on a large number of innocent

investors, they being deprived of the fruits of their hard-earned money, the effort made throughout in the last three years to thwart the investigative process, petitioner Sunil Gandhi having eluded the process by absconding, there being apparently a case for his custodial interrogation, the other petitioner *prima facie* being complicit throughout, this court is not inclined to release either of them on bail at this stage.

32. The petitions and the applications filed therewith are dismissed. The interim orders stand vacated. The petitioner Surendra Kumar Hooda is directed to surrender back to custody of the concerned court forthwith. The other petitioner Sunil Gandhi is directed to join investigation by presenting himself before the investigating officer without further delay or default.

R.K.GAUBA, J.

APRIL 04, 2019

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