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

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Judgment delivered on: 10.06.2020

+ BAIL APPLN. 653/2020

MAYANK SHUKLA

.....Petitioner

versus

STATE

.....Respondent

Advocates who appeared in this case:

For the Petitioner: Ms. Ekta Sikri, Mr. Mukeshwar Nath Dubey, Mr. Devesh Tripathi and Mr. Faraz Anees, Advocates..

For the Respondent: Mr. Mukesh Kumar, Addl. PP for the State with SI Lalit Kumar, P.S.Preet Vihar.
Mr. Neeraj Jain, Mr. Jitender Sethi and Mr. Sharad K. Aggarwal, Advocates for respondent No.2.

+ CRL.M.C.1470/2020

M/S. CELEBRITY REALCON PVT. LTD.

..... Petitioner

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Neeraj Jain, Mr. Jitender Sethi with Mr. Sharad K. Aggarwal, Advocates.

For the Respondent: Mukesh Kumar, APP for the State
Mr. J.P. Singh, Senior Advocate with Mayank Yadav,
Advocate for respondent no. 2.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The hearing was conducted through video conferencing.
2. Both these petitions arise out FIR No.157/2019 under Sections 408/420/467/468/471/120B/34 IPC, Police Station Preet Vihar.
3. Mr. Mayank Shukla – Petitioner in Bail Appln. 653/2020 seeks regular bail in the subject FIR. Petitioner in Crl.M.C.1470/2020 is the complainant in the subject FIR and seeks cancellation of bail granted by order dated 17.03.2020 whereby respondent No.2 – Ms. Nikita Sharma was granted bail by the Trial Court.
4. The case of the prosecution is that the complainant company is engaged in real estate business including construction, development and sale purchase of residential apartments and commercial units.
5. It is contended that on 14.10.2019 the authorised representative of the complainant company, Mrs. Uma Agarwal called for the office files pertaining to certain customers of two of its projects in order to check the process of execution of the sub lease deeds. Upon inspection of the files, it came to her notice that the sale price mentioned in certain allotment agreements was shown much below the approved price and also that the signatures of the authorised representative, Mr. Ashish Agarwal were forged and in some files the portion of the booking form, where the sale price per unit, is mentioned was found torn.

6. As per the prosecution, the said authorised representative, Mrs. Uma Agarwal called the dealing officials (co-accused) and confronted them and they are alleged to have stated that they along with certain other ex employees connived and wrote a lesser price instead of the actual price of the apartment fixed by the company on the allotment agreement and after forging the approval signature of the authorised signatory on the allotment agreement received lesser amount in the name of the company and the differential amount was received in cash and misappropriated.

7. A complaint was filed with the police and consequent to the complaint, subject FIR was registered.

8. As per the case of the prosecution, during investigation it is alleged that it came to light that Mr. Mayank Shukla – (petitioner in Bail Appln. 653/2020) was the property broker and he in connivance with Ms. Nikita Sharma (respondent No.2 in Crl.M.C.1470/2020) and some other employees of the company would change the rate approved by the authorised representative, Mr. Ashish Agarwal and show a lesser price on the allotment form and the differential would be taken in cash and misappropriated.

9. As per the case of the prosecution, the amount used to be collected, in cash, by Mr. Mayank Shukla, from the customers on the asking of Ms. Nikita Sharma, and after deduction of his commission it would be given to one Mr. Parmanand Gaur on loan in the name of Ms. Nikita Sharma and Mr. Parmanand Gaur would then give the

amount further on loan to third parties at higher rate of interest.

10. As per the prosecution the signatures of the authorised representative on some of the booking forms are forged and the allotment agreements are fabricated. It is contended that 41 flats were sold in the above fashion.

11. As per the supplementary charge sheet filed, approximately Rs.7.29 crores is the loss caused to the company out of which the prosecution seeks to rely on the disclosure statement of the accused to contend that Ms. Nikita Sharma received approximately Rs. 3 crores and Mr. Mayank Shukla received approximately Rs.51 lakhs and the other amounts have been distributed amongst the other co accused.

12. Learned APP submits that the connection of Ms. Nikita Sharma, apart from the statement of Mr. Parmanand Gaur and the statement of account furnished by him, is established from the Whatsapp chat exchanged between Ms. Nikita Sharma and Mr. Parmanand Gaur.

13. Mr. J.P. Sengh, learned senior counsel appearing for Ms. Nikita Sharma as also Ms. Ekta Sikri, learned counsel appearing for Mr. Mayank Shukla contend that the entire story of the prosecution is false and fabricated and there is no material to connect them with the alleged offence. They submit that neither Ms. Nikita Sharma nor Mr. Mayank Shukla are named in the complaint or the FIR.

14. It is further contended by learned senior counsel that Ms. Nikita

Sharma admittedly left the company on 24.07.2018 and there are several transactions which are alleged to have happened after she left the company and same have been attributed to her.

15. Learned senior counsel further submits that apart from the self serving statement of Mr. Parmanand Gaur and the alleged statement of account, there is no material to connect her with the alleged offence. He further submits that the prosecution is relying on an isolated Whatsapp chat of December, 2018, when admittedly she was not in the company and that chat has also not been confirmed by the forensic authorities and further it is contended that in the alleged chat there is reference to flats which were admittedly sold by the company after she left the company.

16. Further, it is contended that the bare reading of the statement of Mr. Parmanand Gaur shows that the alleged statement of account, relied upon by the prosecution, is not stated to have been maintained by him in the regular course of business is admittedly a copy, which he says he has copied onto a computer from a pen drive and then a print out given to the Investigating Officer.

17. Learned senior counsel further submits that as per the alleged statement of account furnished by Mr. Parmanand Gaur (which is denied by Ms. Nikita Sharma), he owes a sum of Rs.1,05,97,005/- to Ms. Nikita Sharma. He submits that he has no objection in case the said amount is seized by the Investigation Officer and deposited with the Trial Court subject to the final outcome of the prosecution.

18. Learned senior counsel further contends that there is no material on record to show as to what was the approved rate and/or that the flats were sold at a lower rate and there is nothing filed on record to substantiate the allegation that any loss was suffered by the company leave alone a loss of Rs. 7 crores.

19. Learned senior counsel appearing for Ms. Nikita Sharma further submits that out of the 41 alleged flat buyers with regard to whom there is an allegation, notices were issued to only 17 flat buyers and most of them have stated that no cash was paid.

20. Learned counsel appearing for Mr. Mayank Shukla submits that there is nothing to connect Mr. Mayank Shukla with the alleged offence. She submits that Mr. Mayank Shukla was merely a property dealer dealing in several properties including the assets of the complainant company.

21. She submits that apart from the alleged statement of Mr. Parmanand Gaur, there is no material to connect Mr. Mayank Shukla with the alleged offence. She, however, without prejudice submits that since as per the prosecution approximately Rs. 51 lakhs are alleged to have come to the share of Mr. Mayank Shukla and because of the fact that he has been in custody since 17.10.2019 and he has elderly parents and wife and a one year old child to support, he is willing to deposit a sum of Rs.25 lakhs with the Trial Court subject to outcome of the prosecution.

22. She submits that the offer of Rs.25 lakhs has been made because the Investigating Officer has already directed the bank to freeze the fixed deposit in the name of Mrs. Neha Tripathi wife of Mr. Mayank Shukla, which was created by her from her own sources and this offer is being made because of the present prevailing situation and without prejudice to his defence and without admitting any role in the alleged offence. She submits that she has taken instructions from Ms. Neha Tripathi and she has no objection to the fixed deposit in her name being encashed and deposited with the Trial Court.

23. Mr. Neeraj Jain, learned counsel appearing for the complainant submits that with a view to secure the interest of the company, he has no objection in case the IO recovers the amount admitted by Mr. Parmanand Gaur held by him on behalf of Ms. Nikita Sharma and payable by him to her and deposits the same with the Trial Court subject to the outcome of the prosecution.

24. It is noticed that though in the statement of account submitted by Mr. Parmanand Gaur to the IO, it is stated that a sum of Rs.1,05,97,005/- is the credit balance in the account of Ms. Nikita Sharma, however, in his statement recorded under Section 164 Cr.P.C., Mr. Parmanand Gaur has stated that approximately Rs. 60 – 70 lakhs is the balance payable to her.

25. Without commenting on the merits of the case and in view of the above, I am of the view that Mr. Mayank Shukla has made out a case for grant of bail. Further, in view of the above, I am of the view

that the order of the Trial dated 17.03.2020 granting bail to Ms. Nikita Sharma is a well reasoned order and does not call for any interference.

26. The petitions are disposed of in the following terms:-

- (i) Subject to Mr. Mayank Shukla depositing with the Trial Court a sum of Rs.25 lakhs and furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the Trial Court, Mr. Mayank Shukla shall be released on bail;
- (ii) In case the fixed deposit in the sum of Rs. 25 Lakhs, in the name of Ms. Neha Tripathi, wife of Mr. Mayank Shukla, has already been attached, Mr. Mayank Shukla would not be required to deposit the sum of Rs. 25 lakhs. The concerned bank shall encash the fixed deposit and remit the amount to the Trial Court within a period of one week from today.
- (iii) It is clarified that in case the fixed deposit already stands attached, then the release of Mr. Mayank Shukla on bail would not be dependent on the remittance of the amount by the bank to the concerned Trial Court and he shall be released on furnishing of the requisite bail bonds.
- (iv) Further, Mr. Mayank Shukla shall not do anything which may prejudice the trial or the prosecution witnesses;
- (v) He shall not leave the country without prior permission of the

trial Court;

- (vi) He shall intimate on record of the Trial Court, any change of his residential address within 30 days of such change;
 - (vii) Keeping in view the statement of Mr. Parmanand Gaur and the statement of account furnished by him, the IO is directed to seize from Mr. Parmanand Gaur the entire amount stated by him to be owed to Ms. Nikita Sharma and deposit the same with the Trial Court.
 - (viii) The Trial Court shall keep the entire amount deposited by Mr. Mayank Shukla as also recovered by the Investigating Officer from Mr. Parmanand Gaur Court in an interest bearing fixed deposit subject to outcome of the trial in so far as Mr. Mayank Shukla and Ms. Nikita Sharma are concerned.
27. Petitions are disposed of in the above terms.
28. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsels for the Parties through email.

SANJEEV SACHDEVA, J.

JUNE 10, 2020

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