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

Date of decision: 11th October, 2021

IN THE MATTER OF:

\+   **BAIL APPLN. 536/2021 & CRL.M.(BAIL) 522/2021 & CRL.M.(BAIL) 1212/2021**

SUDARSHAN SINGH ASWAL ..... Petitioner

Through Mr. Kirti Uppal, Senior Advocate with Mr. M.S. Bammi and Ms. Riya Gulati, Advocates

versus

STATE (GOVT. OF NCT OF DELHI) ..... Respondent

Through Ms. Kusum Dhalla, APP for the State. Mr. Tanmaya Mehta, Mr. Raghav Narayan, Mr. Aditya Arora, Mr. Yash Prakash and Mr. Madhav Narayan, Advocates for the complainant along with the complainant.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 439 Cr.P.C is for grant of bail to the petitioner in FIR No.328/2019 dated 05.11.2019, registered at Police Station Crime Branch for offences punishable under Sections 406, 419, 420, 467, 468, 471 read with Section 120B IPC.

2. Facts, in brief, leading to the present petition are as under:

   a) The instant FIR was registered on the complaint given by one Ravinder Kler (hereinafter referred to as 'the complainant'). The complaint was received in the Special Investigation Unit-I, Crime Branch, Delhi. It is stated that the complainant is a Doctor by profession practicing in Delhi. It is stated that the complainant met one Vinod Thapa (accused No.1) in a social gathering wherein Vinod Thapa introduced himself as a property dealer who had been in the business since several years and was handling high profile clientele. It is stated that Vinod Thapa represented that a plot of land, located at a prime area in Dehradun, was available at a very low and attractive price. It is stated that Vinod Thapa represented to the complainant that he knew the owner of the said plot who is willing to sell the plot and he offered the complainant to purchase the same. It is stated that Vinod Thapa persuaded the complainant by stating that the land is being sold at a very low price and that the complainant would be able to sell the plot at a very high price. It is further stated that Vinod Thapa told the complainant that he already knew people who would buy the plot at higher prices. It is stated that Vinod Thapa introduced prospective buyers to the complainant. It is stated that the complainant was reluctant to go ahead with the deal but Vinod Thapa offered to make 50% investment in the said property. It is further stated that Vinod Thapa told the complainant that the Agreements would be entered into with the sellers on payment of initial amounts (i.e. 10-20% of the purchase price) and he would ensure that before the dates, when final payments have to be made, he would get onward sale agreements executed for higher prices to ensure a quick gain on the amount invested and also to ensure that the complainant would not have to pay the full amount to the seller. It is stated that for this purpose, Vinod Thapa introduced the complainant to one Rajan Sharma (Accused No.4) who claimed to be working in the same real estate company, acting as broker for various high-profile politicians and businessmen. It is further stated in the complaint that Vinod Thapa told the complainant that he would not be able to enter into such agreements in his own name and for that purpose he proposed to invest his share (i.e 50%) of the total investment through one Mr. O. P. Joshi, who was stated to be his old-time confidant. It is stated that Vinod Thapa introduced the said Mr. Joshi to the complainant. It is stated that the complainant along with Mr. Joshi went to Dehradun on 08.02.2018, wherein he met the petitioner herein who represented to be a businessman having various mineral water plants apart from being engaged in agricultural activities in the various parcel of lands which he owned in Dehradun, including a plot of land bearing Khasra No. 29, 23 and 14 admeasuring 16 *bighas*, located in Bakarna, Dehradun, Uttarakhand, which he was interested to sell. It is stated that the petitioner herein and Mr. Joshi took the complainant to the site. It is further stated that on 09.02.2018, Vinod Thapa called the complainant and Mr. Joshi to the office of the Registrar in Dehradun where he wanted to execute the Agreement for the said deal. It is stated that Vinod Thapa introduced the complainant to one Prashant Thapa (Accused No.2) who represented to be the Patwari's

Clerk of the concerned area and said that he handles the pre-mutation documentation for the transactions pertaining to land falling under his area. It is stated that title deeds of the said plot of land were shown to the complainant and Prashant Thapa confirmed the genuineness & veracity of the same and also showed some documents purporting to be the relevant government records wherein the petitioner's name was recorded as the owner of the said plot of lands. It is further stated that the complainant was asked to refrain from discussing the financial consideration with the petitioner herein. It is stated that the complainant had no reason to dis-believe the documents which had been shown to him at the office of the Registrar and he was induced to enter into an agreement to sell. It is stated that on 09.02.2018 an Agreement to sell (hereinafter Agreement No.1) was entered into between the petitioner herein and the Complainant along with Om Prakash Joshi for a land situated at Bakarna, Dehradun, admeasuring 16 *bighas,* for a sum total of Rs.2,00,16,000/-. It is stated that at the time of signing the Agreement a sum of Rs. 20,00,000/- was paid by the Complainant to the petitioner herein as advance token payment.

b) It is stated that on returning to Delhi Vinod Thapa introduced the complainant to one Mohd. Zaidi (Accused No. 3) who was also working with him in the same Real Estate Company. It is stated that Vinod Thapa told the complainant the Mohd. Zaidi would assist them to sell the above-mentioned plot to Mr. Rajan Sharma (Accused No. 4), who is their superior in the same

Company. It is stated that the complainant was told not to discuss about the financial deals with Mr. Rajan Sharma. It is stated that a meeting took place between Vinod Thapa, Mohd. Zaidi, Rajan Sharma and the complainant at the officer of Rajan Sharma who represented that he looks after the property work of various influential politicians and businessmen and conducts verification of such land etc for such high-profile clientele before purchasing the property. It is stated that Rajan Sharma expressed his desire to purchase the aforesaid plot at the rate of Rs.30,00,000/- per *Bigha* (amounting to Rs.4,80,00,000/-). It is stated that the complainant agreed to sell the land to Rajan Sharma. It is stated that in order to make the complainant believe the bona fides of the transaction, Rajan Sharma stated that he would transfer Rs.1,50,000/- via RTGS as token money to the account of the complainant and the same was done on 01.03.2018. It is stated that the complainant felt secured that the transaction was genuine and subsequent purchaser was also available. It is stated that pursuant to the meeting with Rajan Sharma, Vinod Thapa represented to the complainant that upon receiving the remaining amount from Rajan Sharma, he and the complainant can pay the remaining consideration to the petitioner herein. It is stated that pursuant to Agreement No.1, five more agreements were entered into by the complainant which are as under:

i. Agreement No. 2 was entered into between the petitioner herein and the Complainant on 20.02.2018 for land admeasuring 22 *bighas* situated at Pargana, Vikas Nagar, Dehradun for a sum total of Rs. 2,97,22,000/-(Two Crores ninety-seven lakh and twenty two thousand rupees). At the time of signing the Agreement a sum of Rs. 20,00,000/- was paid by the Complainant as advance token payment.

ii. Agreement No.3 was entered into between one Dinesh Chandra Ramola (Accused No.6, who turns out to be the driver of the petitioner herein) and Complainant on 12.03.2018 for land admeasuring 30 *bighas* located at Mauja Gram, Dhalani, Dehradun for a sum total of Rs. 2,25,00,000/- (Two Crores twenty-five lakh rupees). At the time of signing of the Agreement the Complainant paid Rs. 25,00,000/- as advance token payment.

iii. Agreement No.4 was entered into between one Asbhal Ali (Accused No.7) and Complainant on 12.03.2018 for land admeasuring 26 *bighas* situated at Mauja Gadul, Parvadun, Dehradun for a sum total of Rs. 1,17,00,000/- (One Crore and seventeen lakh rupees). At the time of signing of the Agreement the Complainant paid a sum of Rs. 35,00,000/- as advance token payment and Rs. 30,00,000/- by cash.

iv. Agreement No.5 & Agreement No.6 were entered into together between one Rihana (Accused No.8, who is still absconding) and Anil Taneja (friend of Complainant, acting on his behalf) on 23.05.2018 for 13 *bigha* land located at Mishrapatt, Pargana, Vikas Nagar for a sum total of Rs.16, 25,00,000/-(Sixteen Crores twenty five lakh rupees). Both the agreements were revised on 14.11.2018 and rate per *bigha* of land was enhanced by Rs. 50,000/-. At the time of signing the agreement, an advance token amount of Rs.10,00,000/- was paid by the complainant through Anil Taneja. After revision of the agreement in November, further amount of 7,00,000/- was paid by the Complainant.

c) It is stated that the complainant has invested more than Rs.2 crores in the transactions. It is stated that after paying more than Rs.2 crores, the complainant started following up with accused Nos.1-4 (Vinod Thapa, Prashant Thapa, Mohd. Zaidi and Rajan Sharma) for execution of the sale deeds with the prospective buyers but nothing was progressing. It is stated it was found that the petitioner was not the owner of the entire property which he represented that he is the owner of the entire property. It is further stated that on enquiry it was found that the portion of land which was to be sold to the complainant was in fact Government land, not belonging to the petitioner. It is stated that the petitioner was cheated and had been lured to pay a substantial sum of money.

d) On this complaint FIR No.328/2019 dated 05.11.2019, was registered at Police Station Crime Branch for offences punishable under Sections 406, 419, 420, 467, 468, 471 read with Section 120B IPC.

e) The petitioner was arrested on 28.10.2020.

f) The petitioner filed an application for bail before the learned District and Sessions Judge, Central Delhi and the same was dismissed by the learned Additional Session Judge, Central District, Tis Hazari Courts, by an order dated 19.01.2021.

g) Thereafter, after filing of the charge-sheet the petitioner filed another application for bail before the learned District and Sessions Judge, Central District, Delhi and the same was dismissed by the learned Additional Session Judge, Central District, Tis Hazari Courts, by an order dated 04.02.2021.

h) The petitioner has thereafter approached this Court by filing instant bail application.

3. Mr. Kirti Uppal, learned Senior Counsel appearing on behalf the Petitioner, contends that the instant case arises out of a civil transaction. He contends that the petitioner owns a majority of the portion of the land and only a small portion of land is Government land. He further states that the petitioner served two legal notices to the complainant herein on 29.06.2018. He states that the first legal notice was served by the petitioner to the complainant and Mr. O. P. Joshi in which 15 days more time was given to the complainant and Mr. O.P. Joshi to execute the sale deed, as mentioned in the Agreement No.1, after paying the entire consideration amount to the petitioner. He further states that the second legal notice dated 29.06.2018 was served by the petitioner to the complainant in which 15 days more time was given to the complainant to execute the sale deed, as mentioned in the Agreement No.2. He contends that after receiving the notices the complainant did not take any step for payment of the outstanding amount rather he has instituted the present complaint. He, therefore, states that the

present FIR is only an abuse of the process of law. The learned Senior Counsel relies on the judgment of the Supreme Court in Mohd. Ibrahim v. State of Bihar, **(2009) 8 SCC 751,** to contend that no case under Section 467 IPC is made out against the petitioner. He further states that the petitioner is in custody since 28.10.2020, the evidence is primarily documentary in nature and therefore the petitioner be granted bail.

4. *Per Contra*, Mr. Tanmaya Mehta, learned Counsel appearing for the complainant, supplemented the arguments of Ms. Kusum Dhalla. He submitted that the Petitioner is a habitual offender and is an accused in FIR No. 266 of 2021 registered at PS Karol Bagh. He submitted that the Petitioner has used the same modus operandi to sell the same patch of farm land to one Gurpreet Singh and is running a racket of defrauding people, many of them are in the process of being unearthed. He contends that the Petitioner will influence key witnesses to turn hostile in the trial as the co-owners of the land have submitted affidavits which are vague and false contrary to their statements recorded by the Police during investigation. It was submitted that the affidavit of witness Mahavir Singh in the trial is a fabricated as it does not contain the particulars of the notary who has stamped on it.

5. He argued that the cheque bearing amount of Rs.37,00,000/- issued by the accused Vinod Thapa to Sudarshan Singh Aswal as token payment under Agreement No.2 was in fact a fabricated signature of one Guru Prasad so that it could not be deposited in the bank by the Petitioner and that reflects a *mala fide* intention of the Vinod Thapa and Petitioner. He submitted that all the accused persons including the Petitioner are deft at cheating persons by skillful misrepresentation and have tried to sell to the complainant even

Government land. He submitted if the Petitioner is enlarged on bail, he would vitiate the principles of free trial by coercing witnesses and would commit the same offences.

6. He submitted that on analysis of the bank accounts of the Petitioner it was seen that the Petitioner did not deposit the cheques of token amounts given on behalf of Vinod Thapa whereas the cheques given by the complainant were encashed immediately. He further submitted that several transactions between the Petitioner and accused Vinod Thapa were noticed i.e. monies were sent by the Petitioner to Vinod Thapa after receiving the advance money under both agreements to sell from the Complainant.

7. He submitted that accused Dinesh Chandra Ramola who projected himself to be an owner of land also entered into agreement of sale with the Complainant, was in fact the driver of the petitioner not owning any land acting on Petitioner' instructions. He argued that transactions done from the bank account of Dinesh Ramola showed that he transferred Rs.3 lakhs into the account of the Petitioner' spouse and in the account of Vinod Thapa from the token proceeds received from the Complainant. Ms. Dhalla contends that he has committed his statement to the Police that he was acting on the orders of his master i.e. the Petitioner and Vinod Kumar Thapa.

8. Ms. Kusum Dhalla, learned APP for the State, opposes the instant bail application. She contends that the Petitioner, in conspiracy with Vinod Thapa and other accused, who were connected and related to the Petitioner and Vinod Thapa, have hatched an elaborate plan to dupe the complainant and entered into agreements to sell. She further stated that one co-accused, Rihana (Accused No.8) is still absconding. She places reliance on the

charge-sheet to submit that the petitioner is accused of a very serious offence, and therefore, bail ought not to be given to him.

9. Heard Mr. Kirti Uppal, learned Senior Advocate appearing for the Petitioner, Ms. Kusum Dhalla, learned APP appearing for the State and Mr. Tanmaya Mehta, learned Counsel appearing for the Complainant and perused the material on record.

10. After the judgment was reserved a settlement/compromise deed has been entered into between the petitioner, the complainant, son, daughter and wife of the petitioner and one Ramesh Negi who has stood guarantee. Under the said agreement the petitioner has agreed to pay a sum of Rs.2,65,00,000/- as full and final settlement in view of the cancellation of the agreement to sell and as full and final settlement to the FIR. An application being CRL.M. (BAIL) 1212/2021 has been filed seeking interim bail till the compliance of the settlement/compromise.

11. It is settled law that while granting bail, the Court has to consider precise factors while deciding an application for bail. The Court at the stage of bail does not need to conduct a mini-trial and need not appreciate the evidence on record and should not perform the functions of the Trial Court.

12. The parameters for granting bail has been laid down by the Supreme Court in several judgments. The Supreme Court in P. Chidambaram v. CBI, **(2020) 13 SCC 337**, laid down crystallized parameters based on which Courts should decide bail applications, it held as under:

> " **21.** *The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:*

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;
(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;
(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;
(iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;
(v) larger interest of the public or the State and similar other considerations."

13. The Supreme Court in Sanjay Chandra v. CBI, **(2012) 1 SCC 40**, has observed as under:

*"**21**. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*

***22**. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons* *should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.*

23. *Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.*

24. In the instant case, we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the

constitutional rights but rather "recalibrating the scales of justice".

***25**. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual."*

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*"**46**. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country.* ***At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation****. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI."*

(emphasis supplied)

14. The parties have entered into a settlement. In any event the petitioner is in custody for the past one year. The evidence is primarily documentary in

nature and is in the custody of the police. The complainant is also a man of means and the chances of his being won over by the accused by threat etc. is remote. In view of the compromise entered into between the parties and in view of the law laid down by the Supreme Court in Sanjay Chandra (supra) this Court is inclined to grant bail to the petitioner on the following conditions:

i. The petitioner is directed to furnish a personal bond in the sum of Rs.3,00,000/- with two sureties in the like amount, one of whom shall be a relative of the petitioner, to the satisfaction of the Trial Court/Duty Magistrate.

ii. Memo of Parties indicates that the petitioner is a R/o Bhanwala, Dehradun, Uttarakhand. The Petitioner is directed to continue to reside at the same address. In case there is any change in the address, the Petitioner is directed to intimate the same to the IO.

iii. The petitioner is directed not to leave Dehradun, other than for attending Court hearings in Delhi, without prior permission of this Court.

iv. The petitioner shall give all his mobile numbers to the Investigating Officer and keep them operational at all times.

v. The petitioner is directed to report to the Police Station Selaqui Thana, Tehsil Vikas Nagar via Prem Nagar twice every week i.e. on every Monday and Thursday at 10:30 AM and he shall be released within half an hour after completing all the formalities

vi. The petitioner shall not tamper with the evidence or try to influence the witnesses directly or indirectly.

vii. Violation of any of the abovementioned conditions shall lead to cancellation of bail granted.

15. It is made clear and needless to state that the observations made in this order are only for the purpose of grant of bail and cannot be taken into consideration during the trial.

16. Accordingly, the bail application is disposed of along with all the pending applications.

SUBRAMONIUM PRASAD, J

OCTOBER 11, 2021
Rahul