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

\+ **BAIL APPLN. 640/2021**

Date of decision: 11th October, 2021

IN THE MATTER OF:

VINOD KUMAR THAPA ..... Petitioner

Through Mr. K. K. Manan, Senior Advocate along with Ms. Uditi Bali, Advocate

versus

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

Through Ms. Kusum Dhalla, APP for the State Mr. Tanmay Mehta, Mr. Ravindra Narayan, Mr. Raghav Narayan, Mr. Aditya Arora and Mr. Madhav Narayan, Advocates for 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. The facts, in brief, pertaining to the case, as described in the FIR, are that the Petitioner and the Complainant, Ravinder Kler, a doctor, met at a party in New Delhi in 2017 where the petitioner introduced himself as a property dealer with a long list of eminent clientele. It is stated that the petitioner and the complainant were in touch thereafter and the Petitioner

told him about lands available for sale at attractive prices in Dehradun, Uttarakhand and that he knew some owners personally and that he could purchase the lands by paying 20% of the purchase price. It is stated that after initial reluctance, the Complainant went to Uttarakhand along with the petitioner to see the plots. During the visit, the Petitioner introduced the Complainant to one Prashant Thapa, as the Clerk of Patwari from the Land Registration office, who confirmed the position represented by the Petitioner that the prices of lands were low as per the circle rate and promised to extend his co-operation in the registration process. The Complainant through the Petitioner met accused Rajan Sharma who was shown as a colleague of the Petitioner and as a broker to many high-profile politicians and businessmen. The Complainant was made to meet accused Mohd. Zaidi who was shown as working in the same company with the Petitioner and it was told to the complainant that he would help him in selling the plots which the Complainant was about to purchase. The Petitioner convinced the complainant to purchase the farm lands in Dehradun, and when the complainant was diffident about the same the Petitioner proposed that he would also invest 50% of the price through his confidant, one Mr. O.P. Joshi. Over the next few visits to Dehradun, the Petitioner arranged meetings for the complainant with purported owners of fields of land. It is stated that the Complainant in partnership with the Petitioner agreed to invest in properties on the assurance that high yielding returns would enure to the Complainant when the plots will resold. The FIR thereafter mentions that total six agreements were entered into by the Complainant, with co-accused Sudarshan Singh Aswal, Dinesh Chand Ramola, Ashbal Ali, and Bibi Rihanna. The Petitioner invested in one of the six agreements jointly with the Complainant, in rest of the agreements the complainant alone entered with other accused persons. For the sake of clarity the agreements entered into by the Complainant are mentioned below-:

(i) Agreement No.1 was entered into between accused Sudarshan Singh Aswal and Complainant along with Om Prakash Joshi on 09.02.2018 for land admeasuring 16 bighas situated at Bakarna, Dehradun for a sum total of Rs. 2,00,16,000/- (Two Crores and sixteen thousand rupees.) At the time of signing the Agreement a sum of Rs. 20,00,000/- was paid by the Complainant to Sudarshan Singh Aswal as advance token payment.

(ii) Agreement No. 2 was entered into between Sudarshan Singh Aswal and Complainant on 20.2.2018 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.

(iii) Agreement No.3 was entered into between accused Dinesh Chandra Ramola and Complainant on 12.3.2018 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.

(iv) Agreement No.4 was entered into between accused Asbhal Ali and Complainant on 12.3.2018 for land admeasuring 26 bighas situated at MaujaGadul, 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.

(v) Agreement No.5 & Agreement No 6. was entered into together between Rihana and Anil Taneja (friend of Complainant acting on his behalf) on 23.5.2018 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 14.11.2018and 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 again.

3. After entering into the agreements, when the complainant followed the co-accused persons for execution of the sale deeds with the prospective buyers, the Petitioner cited excuses for non-performance of the agreements by the parties which aroused suspicion in the complainant regarding the veracity of the sale agreement deals. It is stated that on enquiry the complainant found that the token payments made by him under different sale agreements had been secretly transferred to the Petitioner’s bank account and he discovered that all the purported owners of the lands had connived with the Petitioner to defraud the complainant and did not possess the intention to make good the promises committed in the Agreements to Sell.

4. FIR was registered against the Petitioner, Sudarshan Singh Aswal, Dinesh Chandra Ramola, Ashbal Ali, Rihana, Prashant Thapa. Investigation is complete. Chargesheet stands filed. The investigation revealed that the Petitioner played a pivotal role and was a mastermind in cheating the complainant in connivance and collusion with other co-accused with whom complainant agreed to buy lands from. It was found in the investigation that the Petitioner lured the complainant by stating that he would invest 50% in the property under the sale agreements entered between Sudarashan Singh Aswal and Complainant and to earn the confidence of the Complainant, Petitioner gave a token amount of Rs.20 lakhs by cheque to the complainant under Agreement No.1 and token payment of Rs.37 lakhs was given to the complainant by cheque under Agreement No.2 and the same was not deposited in the bank and encashed by Sudarshan Singh Aswal.

5. It was discovered that Dinesh Chandra Ramola with whom the Complainant signed Agreement No.3 is not the owner of the said land that was apparently intended to be sold under the said agreement and is in fact the driver of co-accsued Sudarshan Singh Aswal. It was also found during the investigation that the Petitioner introduced one Sajid as Ashbal Ali who impersonated to be the owner of the land which was arraigned to be sold to the complainant under Agreement 4. The Petitioner in order to gain the trust of the complainant and in order induce him to invest in more lands made accused Rajan Sharma, who modeled himself as high-profile broker with, transfer Rs. 1,50,000/- as a token show of interest in the land which complainant would buy from the purported sellers.

6. The Investigating officials took out details of the bank accounts of the Petitioner and noticed that under all the six agreements the Petitioner herein, instead of giving 50% token amount to purported sellers, the purported sellers transferred sums of money to the Petitioner after receiving token amounts from the complainant. It was also found that none of the purported sellers actually deposited the token amounts given by the Petitioner in their respective bank accounts and created an ocular façade in the eyes of the complainant to appear that the transactions were fair, bona fide and genuine. During the investigation it was also found that cheques submitted by the Petitioner apparently as token amounts were actually signed in the name of someone else to whom the account did not belong. It was further found that the Patwari's clerk who was introduced to the Complainant by the Petitioner was actually the Nephew of the Complainant and he allegedly impersonated a government servant, moreover transactions from the account of Prashant Thapa were made to Vinod Thapa and vice-versa.

7. The Investigating Agency also seized the mobile phones of the Petitioner and other co-accused and several calls were made by the Petitioner to all other accused' and the CDR records have been referred for FSL examination. The chargesheet mentions that the transcribes of the call records and messages indicate that the complainant has spoken verily stated facts by virtue of the following points-

a) The Petitioner would invest 50% of the price of lands in all agreements.

b) That all accused persons are close confidants and helpmates.

c) The Petitioner took the responsibility from purchase of the land to its later sale.

d) The Petitioner inevitably won the trust of Complainant.

e) That he performed the last rites of accused Mohd. Zaidi, who actively was involved in cheating the Petitioner who has expired.

8. It was stated by the Investigating agency, that O.P. Joshi and Pratap Bisht, who first introduced the Complainant to the Petitioner, have in their Section 161 Cr.P.C statements said that the Petitioner persistently insisted the Complainant to meet him and consider buying property in Uttarakhand at throw away prices; and that the complainant would have to arrange a minimum token amount, the rest balance amount would have to be paid later and the Petitioner would become a partner in this deal to buy the properties and invest 50% of the total amounts- both token and remaining balance amounts. Both O.P. Joshi and Pratap Bisht have further stated that the Petitioner introduced Sudharshan Singh Aswal as a local farmer and businessman in their presence and the Sale Agreements were also signed by O.P. Joshi on behalf of the Petitioner. It is stated that the amounts Complainant has been cheated of has not been recovered so far.

9. The prosecution has made a list of transactions that were made into the account of the Petitioner, they are as follows-

(i) Transfer of Rs.1,00,000/- was done by Ashbal Ali into the account of the Petitioner on 15.02.2018

(ii) Transfer of Rs.9,00,000/- was made by the Sudharshan Singh Aswal into the account of Petitioner on 27.02.2018

(iii) Transfer of Rs. 50,000/- was made by the Petitioner to another bank account operated by him on 03.03.2018

(iv) Transfer of Rs.6,80,000/- by RTGS mode was made by Petitioner to Prashant Thapa.

(v) Transfer of Rs. 2,00,000/- was made by Petitioner to Prashant Thapa on 08.03.2018

Furthermore, as per the prosecution, son of the Petitioner herein, Shivesh Thapa has received 58 lakh rupees in cash and deposited the same into his bank account. Shivesh Thapa also received 11.80 lakhs from Sudarshan Singh Aswal and Prashant Thapa has received 52 lakhs from other co-accused persons into his bank account.

10. The Ld. Trial Court vide order dated 16.2.2021 dismissed the bail application of the Petitioner stating that the accused persons hatched a well-planned and well executed criminal conspiracy to commit fraud on the complainant and that one of the co-accused Ashbal Ali executed agreement to sell in respect of government land and the extent of fraud was of Rs, 2.40 Crore Rupees, which is no small amount. The Court further stated in response to the argument of the State that the offence of Section 467 the Petitioner has been charged with is inessential insofar as the bail plea is considered and the same would be dealt with by the Trial Court at the stage of framing of charges.

11. It is pertinent to note that the Petitioner applied for bail on medical grounds by approaching this Court. This Court *vide* order dated 28.5.2021 rejected the plea of the Petitioner as his medical report, issued by the Jail Authorities, opined that his condition was stable and medical attention was being given as and when the Petitioner required it.

12. Heard Mr. K.K. Manan, Ld. Senior Counsel appearing for the Petitioner, Ms. Kusum Dhalla, Ld. APP appearing for the State and Mr. Tanmaya Mehta, Ld. Counsel appearing for the Complainant and perused the material on record.

13. It has been argued by Mr. K. K. Manan, Ld. Senior Counsel, that the Petitioner has registered the FIR after one year of delay which depicts that the Complainant has deliberately accused the Petitioner as the mastermind of entering into the agreements after the agreements to sell could not be cemented & translated into sale and transfer of the lands under them. It is submitted that the Petitioner was acting in a true, bona fide manner as a property dealer wanting to secure a good deal for his client cum complainant Mr. Ravinder Kler. He states that after lodging of the FIR on 15.9.2019, the Police arrested the Petitioner a year thereafter as they did not have any evidence or cogent on which they could arrest the Petitioner.

14. Mr. Manan submitted that the agreements were entered into in Uttrakhand, the plots of land in question are in Uttarakhand. He states that the FIR cannot be registered in Delhi. He further states that the investigating agency has filed its chargesheet before the Ld. Trial Court and there is no requirement of any further custodial interrogation of the Petitioner any longer. He therefore states no useful purpose is going to be served if he Petitioner is kept in Jail as he has spent almost 11 months in custody since his arrest on 28.10.2020. He argued that the Complainant is concocting stories as he was not able to purchase the land finally after signing agreements to sell with the owners of the properties and because the complainant could execute the agreements he is squarely blaming the Petitioner for its non-implementation.

15. Mr. Manan argued that the dispute in the FIR is purely a civil dispute that is being given the color of criminality. The Petitioner as a friendly gesture agreed to become a co-partner in two agreements with the Complainant and as a point in fact the Petitioner has also suffered financial loss from the non-fructification of the agreements to sell. He argues that the Petitioner was facilitating purchase of lands at low rates and the complainant greedily wanted to enter into more agreements and enhance his investment for selling it later at a profitable rate.

16. *Per contra*, Mr. Tanmay Mehta, learned counsel for the complainant, submitted that the Petitioner induced the complainant to buy lands situated at prime locations in Dehradun. He submits that to convince the complainant the Petitioner along with other accused and plotted an immaculately orchestrated conspiracy to compel the complainant to purchase the lands and for that the Petitioner in connivance rehearsed a series of illegal actions to win over his trust. He submitted that the complainant was initially not interested in the offer and the Petitioner coaxed him by offering to become a co-investor in the purchase of said lands and suggested to him that he could after buying the lands sell it to interested parties and for that introduced him other accused persons who would help in finding buyers after the complainant purchased the lands.

17. Mr. Mehta submitted that the cheque given by the Petitioner to accused Sudharshan Singh Aswal was a fabricated cheque with a different name i.e. Guruprasad in the signature column from the account holder which could not be deposited or encashed. He submits that the Petitioner has received money in his bank accounts from other accused persons after the Complainant had given the token advance payments to the purported

owners/accused persons and the Petitioner's relatives including his Son and Nephew have also received monies in their accounts from other accused. He states that the cash that was allegedly given to the Petitioner has not yet been recovered by the investigating agency.

18. Ms. Kusum Dhalla, learned APP for the State, argued that O.P. Joshi and Pratap Bisht, during police questioning, have stated that the Petitioner was keenly persuading the complainant to buy lands citing lucrative future monetary returns that they could vastly benefit the complainant and they have said that the Petitioner introduced other accused to the complainant and arranged for their meetings. He submits that that if the Petitioner is granted bail there is a major possibility that the Petitioner may influence these witnesses from deposing in the Trial and would vitiate the adjudication by way of a fair trial.

19. She submitted that the Petitioner is also involved in FIR No. 585/2015 for offences under 420 and 406 IPC wherein the allegations against the Petitioner are similar as is in the present case and the petitioner is also involved in FIR No. 28/2006 registered at PS Vikas Nagar, Dehradun for offences under Section 420,467,468,471 read with Section 120B IPC. She states that the Petitioner is a habitual offender and if this Court grants him indulgence by accepting his bail application there is a big possibility that he may commit further offences. She lastly states that two of the other accused are still absconding and the Police are making efforts to apprehend them and further investigation into the matter is still ongoing and if the Petitioner is released on bail he may hinder the process of justice by evading the trial.

20. After the judgment was reserved a settlement/compromise deed has been entered into between the complainant, the co-accused (Sudarshan

Singh Aswal), his wife and children and one Ramesh Negi who has stood guarantee. Under the said agreement Sudarshan Singh Aswal 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.

21. The primary considerations that survey the Court while hearing an application of bail are as given under-

(i) The nature and gravity of the offence that is alleged against the applicant

(ii) The possibility of the accused tampering with evidence or influencing witnesses if granted bail.

(iii) The likelihood of the accused fleeing the due process of law.

(iv) The conduct of the accused insofar as assessing the possibility of the accused committing another offence if granted bail.

22. The Supreme Court recently reiterated the grounds on which Courts should decide bail applications, it held in P. Chidambaram V. CBI, (**2020) 13 SCC 337**, 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:*
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> *(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;*
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> *(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."

23. The Supreme Court in the case of Prahlad Singh Bhati V. NCT of Delhi, **(2001) 4 SCC 280,** expounding on grounds on which bail should be granted or declined are as follows-

> ***"8.*** *The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.***"**

3. The Supreme Court in <u>Sanjay Chandra v. CBI</u>, **(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.*
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> ***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.*
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> ***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."*
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> (emphasis supplied)

24. While considering the facts and circumstances of this case it needs to be noted that the charges which have been alleged against the Petitioner will be proved in Trial and at the stage of bail the Court ought not consider the evidence, testimonies, depositions or all go into the nitty-gritty of the case which essentially is the function of the Trial Court. This Court while deciding the bail application cannot venture into making an in-depth prognosis into anything else apart from the aforementioned factors necessary for deciding whether the liberty of an accused can prevail subject to satisfaction of other concomitant conditions.

25. The chargesheet in the present case stands filed, the witnesses have been examined and the evidence produced by the prosecution is documentary in nature and cannot be tampered with. In so far as the other absconding accused are concerned they can be dealt in accordance with law once arrested and the investigating agency can choose to file a

supplementary chargesheet *vis-a-vis* the absconding accused if it deems appropriate.

26. 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 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 24/26, Dharampur, Near Anganwari, P.O. Araghar, Dehradun. 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 Nehru Colony 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.

28. 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.

29. Accordingly, the bail application is disposed of along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 11, 2021
Rahul