

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. No.712/2019 & CRLM.A. 34721/2019**

Judgment reserved on : 10.01.2020

Date of decision: 01.09.2021

GARIMA GUPTA

.....Petitioner

Through: Mr. N. Hariharan, Sr. Advocate with
Mr.Vivek Singh & Mr. Omkar Wata,
Advocates.

versus

STATE

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP for State
with Inspr. Bijay Kumar, PS EOW.
Mr. Atul Kumar Singh, Counsel for
Intervener.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner-Garima Gupta, presently on interim bail since 04.03.2019 in relation to FIR No.46/2018, PS EOW Cell, Mandir Marg, New Delhi dated 13.03.2018 registered under Sections 406/409/420/120B of the Indian Penal Code, 1860, seeks the grant of regular bail in relation thereto. The applicant is indicated to have been arrested on 04.08.2018 and was in custody till 03.03.2019 with the charge sheet having been filed on 25.10.2018. The applicant vide the

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present bail application apart from seeking regular bail, had also sought the extension of interim bail granted to her from 04.03.2019 which was to expire on 18.03.2019.

2. Vide order dated 18.03.2019 in the present bail application, interim bail granted to her was extended on the same terms and conditions as set out in the order dated 25.02.2019 of the Court of the learned ASJ with the prayer made by the applicant before the Trial Court for extension of the period of interim bail having been declined vide order dated 14.03.2019. The said interim bail was thereafter extended vide orders dated 10.04.2019, 23.05.2019, 30.08.2019, 16.09.2019, 15.11.2019 and 10.01.2020 with it having been directed vide order dated 10.01.2020 that the application was heard with submissions made on behalf of either side and the status report in terms of order dated 15.11.2019 having been submitted on behalf of the State with an additional affidavit with annexures having been filed by the petitioner and that the interim order would continue till pronouncement of orders in the bail application under consideration.

3. As per the status report dated 06.04.2019 submitted by the State under the signatures of Assistant Commissioner of Police, Section-V:EOW : Delhi Police, Mandir Marg, New Delhi, the FIR No. 46/18, Dt. 13.03.18, U/s 406/409/420/120-B of the Indian Penal Code, 1860, PS-EOW was registered on the joint complaint of Smt. Durga Kumari & 30 other complainants/investors against the Company M/s MSA Developers Pvt. Ltd. having its Regd. office at 11/37, Ground Floor, Old Rajinder Nagar, New Delhi with it having been alleged that in April 2013, the accused company namely MSA Developers Pvt. Ltd.

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had made a pre-launch of a project in the name of "MSA Circuit Heights" which was to come up at Plot No. GH-G4, Jaypee Greens Sports City, SDZ, Sector-25, Yamuna Expressway Industrial Development Authority, Gautam Budh Nagar, UP and that the said company had also brought out various representations through advertisements and brochures to allure the complainants to book the apartments/flats in the said project. It was submitted on behalf of the State through the said status report that the accused company and its representatives misled the investors that the said company had already acquired the requisite land and license to start the project and that the accused company had started accepting the booking much before the statutory approvals from the concerned authority and that the money collected from the complainants/investors were siphoned off to the different accounts.

4. The said status report states further to the effect that during the course of investigation, it was revealed that the accused company had started collecting money from the complainants/investors for booking of the residential units in the said project without having the requisite approvals in place and at the time of booking there was no land with the accused company to start the project and that as per the reply of Yamuna Expressway Industrial Development Authority (i.e. YEIDA), the Building Plan of the said project was approved on 18.09.2014 and the sub-lease of the project land was executed on 22.05.2014, whereas the accused company had started collecting money from the complainants/investors from 24.06.2013 & onwards i.e. much before obtaining the statutory approvals & lawful possession of the project

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land. It has been stated further through the said status report that the buyers/investors were allured to invest in the project by way of dishonest inducement, misrepresentation and concealment of facts by the Directors/Officials of the Company and the booking amount as well as part payments were collected from the investors.

5. During the course of investigation, as per the submissions and the status report of the State, it was revealed that the money collected from the investors/complainants were credited into the bank accounts of the accused company and these amounts were diverted to different accounts i.e. MSX Pvt. Ltd., Highway Castle Pvt. Ltd. (of which the petitioner herein is a Director), individual accounts of Mr. Madhav Saran Agarwal, Mrs. Alka Agarwal & others accounts. It is alleged that the money received from the investors was not used for the completion of the project and that huge amounts were withdrawn from the accounts of the accused company, whereas the construction work at the project site had been done only 10 to 15%. It is further stated through the said status report that there were more complaints received against the accused company for the same project which were clubbed with the present case and the same rose to 93 and their invested amount was Rs.19 Crores with it having been submitted through the status report dated 06.04.2019 that the number of complainants were increasing every day.

6. As per the submissions made through the said status report, during investigation, it was revealed that the accused company was also indulging in selling of one flat to two customers, for example flat No. F-301 in the said project was allotted to two different investors i.e.

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Mrs. Vibha Kumar and Mr. Shashank Shekhar and during investigation, it was revealed that Madhav Saran Agarwal & Mrs. Alka Agarwal were the Directors in the accused company and that they were the authorized signatories in the bank accounts of the accused company and being the Director of the accused company, Madhav Saran Agarwal had played an active role in booking of the flats and had also personally benefitted as investments had been siphoned off to Highway Castle Pvt. Ltd., a different company wherein his daughter Mrs. Garima Gupta i.e. the present petitioner was the Director.

7. The State further submitted that in as much as the present petitioner- Mrs. Garima Gupta is the daughter of Mr. Madhav Saran Agarwal, she had played a very active role in the booking of the flats in the project and then in siphoning off the money of the investors and that she had been named in all the complaints received in the present case and she was the Director of the company namely Highway Castle Pvt. Ltd. in which almost Rs.2.29 crores were transferred from the accounts of MSA Developers Pvt. Ltd. and then that money was used for her own use. The State further submitted that the petitioner herein had also shown herself as a Director of MSA Developers Pvt. Ltd. and MSX Pvt. Ltd. and had written a letter to GM (Property), GNIDA for seeking permission to mortgage the project land in the capacity of Sr.GM (Business Relation), MSA Developer Pvt. Limited and that she had signed the Allotment Letters/Agreements in favour of investors as Authorized Signatory for the accused company MSA Developers Private Limited which showed her control over the company and the

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management of its day-to-day operations since inception of the company. The State further submitted that all complainants/investors had explained the active role of Mrs. Garima Gupta i.e. the petitioner herein in their statements, recorded U/S 161 Cr.P.C. and that the petitioner herein misrepresented herself to be a Director at one place, whereas on the other hand projected herself to be GM (Business Relations).

8. The State further submitted through the said status report that during the course of investigation several raids were conducted to arrest the petitioner/accused Mrs. Garima Gupta but she was absconding and evading her arrest and that non-bailable warrants were issued against the petitioner / accused Mrs. Garima Gupta by the Ld. Trial Court pursuant to which on 04.08.2018, the accused Mrs. Garima Gupta i.e. the present petitioner & Madhav Saran Agarwal i.e. her father were arrested and the charge-sheet was filed thereafter. As per the status report dated 06.04.2019, the cheated amount of Rs.19 Crores was yet to be recovered and if the accused/petitioner-Garima Gupta was released, the same would hamper the ongoing investigation. The said status report also indicated that the other Director namely Mrs. Alka Aggarwal had also been arrested and that the Trial Court had taken cognizance of the offence and had summoned the accused persons vide order dated 29.10.2018. The State further submitted that the petitioner herein seeks interim bail/regular bail in the instant petition on the ground of settlement, though, she has committed an offence against the State at large by committing serious economic offences under section 406/409/420/120-B of the Indian Penal Code,

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1860. The State, thus, opposed the prayer made by the applicant seeking the grant of bail.

9. During the course of the proceedings in the present bail application on 10.04.2019, it had been submitted on behalf of the petitioner that 110 customers had been accommodated amicably in other projects, taking care of 42% of the total investments received and that 40 bookings had been cancelled and that the amount of such investors was in the process of being refunded and that the balance dispute concerned about 280 investors with the money invested by them being in the sum of Rs.39.46 crores, which was equivalent to 56% of the total investment received from the public at large, in as much as a total investment of Rs.70 Crores had been received on bookings being made by 430 customers/investors qua 594 dwelling units and that there had been an unhappiness of the customers/investors due to the delay in completion of the project, pursuant to which there had been an amicable resolution of the disputes to the extent as submitted on 10.04.2019.

10. It was also submitted on 10.04.2019 on behalf of the petitioner that the petitioner was ready to engage such investors who had approached the police through the present FIR, they being about 99 in number, in negotiation so that she could offer solutions to them to their satisfaction, though, it was also submitted on behalf of the petitioner that these endeavours were only to resolve the dispute amicably, without any impact whatsoever on the ongoing proceedings before the criminal Court. *Inter alia* a submission had been made on behalf of the petitioner on 10.04.2019 by the learned senior counsel

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representing the petitioner that the petitioner and such investors/complainants who may be interested, be referred to the Mediation Centre so that the possible solutions could be explored submitting further that by a resolution of the Board of directors of the company, which was adopted on 03.04.2019, the petitioner had been authorised by the company to explore the possibility of a settlement in these matters and the copy of the said resolution of the board of Directors under the cover of an affidavit purportedly sworn on 04.04.2019 by her father Mr. Madhav Saran Aggarwal, the Managing Director of the company, who was then in judicial custody was also placed on record.

11. The proceedings dated 10.04.2019 further indicate that though some of the investors/complainants were present in person in the Court on 10.04.2019 and some were accompanied by their respective counsel, of whom some had reservations as to the bona fides of the offer made, and on being asked, they had submitted their inclination to participate in the mediation proceedings and it had been clarified to them that the settlement, if any, arrived at by each of them would have to be out of their own free will and volition, without any pressure or duress of any kind to enter into any particular agreement or compromise.

12. During the course of the said proceedings, it was also submitted by Ms. Renu Gupta Puggal representing some additional complainants (who were yet to approach the police then) that her clients were also interested in participating in such process of mediation qua which it

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was submitted on behalf of the petitioner by the learned senior counsel for the petitioner that there was no objection to such a request.

13. Vide order dated 10.04.2019 thus, this Court accepted the request for reference to mediation with clarity that this process would not hinder or detract from the proceedings pending before the criminal Court and the parties were thus, referred to the Delhi High Court Mediation and Conciliation Centre with the matter having been re-notified for the date 23.05.2019.

14. Vide proceedings dated 23.05.2019, it is indicated that 12 of the complainants pursuant to the reference made vide order dated 10.04.2019 had entered into a formal settlement agreement with the company accused represented by the petitioner herein, she being the authorised representative and the settlement agreement dated 20.05.2019 was placed before the Court.

15. On behalf of the petitioner, it was further submitted during the course of the proceedings that after this settlement, a large number of other aggrieved persons, i.e. making up a figure of 55 had agreed to the same settlement terms, of whom 15 had already settled amicably and there were only 23 dissatisfied, who had also joined the deliberations with an expectation of their grievances in relation to the enhanced interest being sought to be settled. It was submitted on behalf of the petitioner by the learned senior counsel, on instructions from the petitioner, that she would scrupulously abide by the terms of the settlement agreement keeping in view the timelines, without seeking any enlargement at any stage, though the settlement was also agreed to be monitored scrupulously by the UP Real Estate Regulatory

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Authority (UP RERA), with the petitioner being agreeable to a strict oversee by the Court with it having been submitted on behalf of the petitioner that she was not insisting on the final disposal of the petition on 23.05.2019, with its result being subject to the progress made on the settlement which had been agreed upon.

16. During the course of the said proceedings, Mr. Vinay Sharma, Advocate representing six of the other aggrieved persons and Mr. Rahul Kumar, Advocate representing ten other aggrieved persons, who were not parties to the settlement so far, expressed an inclination to enter into similar mediation process with the petitioner and they too were referred to the Delhi High Court Mediation and Conciliation Centre for 29.05.2019 with it having been directed that if any of the remaining aggrieved persons wished to join the said process, they would also be entertained by the mediator.

17. The proceedings of the date 30.08.2019 indicate that it was submitted on behalf of the petitioner that the mediation proceedings in terms of order dated 23.05.2019 was still in progress. An application bearing CRL.M.A.34721/2019 was also filed by a person seeking intervention, of which notice was issued to the petitioner and to the State.

18. The proceedings dated 16.09.2019 indicate that mediation settlements dated 02.09.2019 & 12.09.2019 were received on the record and it was submitted on behalf of the petitioner that in terms of proceedings dated 23.05.2019, the petitioner was strictly adhering to the terms of the settlement as were being monitored by the UP Real Estate Regulatory Authority (UP RERA) and the progress report in

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relation to the status in terms of the order dated 23.05.2019 was submitted on the record through an affidavit of the petitioner. During the course of the proceedings dated 16.09.2019, Mr. P. Sureshan, Advocate submitted that he represented 55 complainants and submitted to the effect that there had been a settlement of all those 55 complainants with the petitioner but stated that the progress of construction was not as that submitted by the petitioner. The list of the said 55 complainants was directed to be filed with the response of the State having been directed to be filed in relation to the submission made by the petitioner that the construction as detailed in an affidavit dated 13.09.2019 had been made, was directed to be submitted. The response of the petitioner to the application of the intervener was also directed to be filed.

19. A submission was made on 15.11.2019 on behalf of the petitioner that a settlement has since been arrived at with 78 investors out of 93 investors and the list of the said 78 investors with whom a settlement had been arrived at was directed to be placed on record with the details of the settlement arrived at with the copy thereof being supplied to the State. A submission was made on behalf of the complainant that the petitioner was not cooperating with the IRP approved by the NCLT which was refuted on behalf of the petitioner and an undertaking was given that the petitioner would cooperate with the IRP. The status report that was submitted by the State indicated that further construction at the site had stopped in view of the order dated 11.10.2019 of the NCLT. A submission was also made on behalf of the petitioner on 15.11.2019 that all persons arrayed as accused in

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this case apart from the petitioner were on bail and an updated status report was thus directed to be submitted by the State specifying the status of all the other accused arrayed in the case with the petitioner having been directed to remain bound by the undertaking given on her behalf by her learned counsel.

20. The status report dated 12.09.2019 submitted by the State under the signatures of the Assistant Commissioner of Police, Section-V:EOW: Delhi Police, Mandir Marg, New Delhi stated to the effect that another case i.e. FIR No.22/19, Dated 19.02.2019, U/s 406/420/120-B IPG, PS-EOW was registered on a joint complaint of Mrs. Meena Bachhety & others against the Directors of MSX Mall Pvt. Ltd. with its registered office at A-44, GF, Shakarpur, New Delhi. The brief facts of that case brought forth were that the complainants had booked lockable spaces in a mall named MSX Mall at Greater Noida, UP and as per the allotment letter the Developer had to pay 14 to 16 % returns against the received payment of lockable space but the said Developer had stopped the same after a certain period and the complainants were not given possession even after full payment. It had been alleged that the amounts collected from the customers/investors were diverted to its subsidiary companies and that similar properties were sold to multiple people.

21. The said status report dated 12.09.2019 further indicates that fresh notices had been issued to the complainants to join the investigation and a notice had been issued to the Regional Head, UPSIDC, Greater Noida, U.P to ascertain the status of the project land & statutory approvals and they had informed that M/s Nitishree

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Buildcon Pvt. Ltd. (Now MSX Mall Pvt. Ltd.) was granted permission on 15.05.2006 to develop a Multiplex project on Plot No. B-4, admeasuring 17457 Sq. mts, situated at Site-IV, UPSIDC, Greater Noida, Gautam Budh Nagar, UP and the building Plan was approved on 08.02.2007 and that the Completion Certificate was granted on 04.07.2014.

22. *Inter alia* through the status report, it was submitted that as per clause 5 of the settlement Agreement it had been agreed: "That first party shall recommence the construction not later than three months (i.e. mobilization period) from the date of signing of this settlement agreement."

23. It was further stated through the status report that the site had to be properly organized for uninterrupted and smooth construction of the towers and it was expected of the accused company to mobilize the manpower, equipment, machinery and arranging funds for smooth functioning and preparing the site for the construction. The status report dated 12.09.2019 further indicates that the project site was visited and photographs were taken and it was found that the site office had been constructed but was not found functioning, the DG sets had been mobilized, storage room for cement had been constructed and the cement at the site had been mobilized which was being used for the brick work and about 30-35 labourers were found working at site and the Tower Crane had been mobilized at the site but it was not installed and the barricading work of the site was in progress.

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24. As per the status report dated 11.11.2019 submitted by the State, it was averred vide paragraphs 5, 6, 7,8 & 9 to the effect:-

“5. The petitioner has mentioned in the affidavit dated 13.09.2019 that during the first phase viz mobilization period, the status of work which has been completed or in under execution is given as under:

I. The Company had executed the contract/agreements for construction of towers/site with two contractors viz (a) Ascent Constructions Pvt. Ltd. d& (b) Credence Constructions Company.

II. The Escrow Account as per the guidelines of UP-RERA has been opened with Axis Bank, Laxmi Nagar Branch, New Delhi.

III. The plant & machinery i.e. construction crane, batching plant are installed/presently being installed.

IV. The status/progress of different construction works at site.

*6. During the course of verification, M/s Ascent Construction Pvt. Ltd. informed that work order/award was given by the MSA Developers Pvt. Ltd. After, 27.07.2019, the site was mobilized in terms of construction equipment's. The work at the site had commenced at tower C & D. They had executed the work of worth Rs. 47.23 lakh. Moreover, at the time of starting the work an amount of Rs. 15 lakh, towards mobilization of work was paid to them. In addition to that, it is submitted that they have also supplied/sold the machinery and T & P of Rs. 86 lakh to MSA Developer Pvt. Ltd. and most of the machineries and T & P (major parts) have already been delivered at site. **The work was to be completed within 27 months. However, the construction at the site has completely been stalled due to appointment of Interim Resolution Professional by the Hon'ble NCLT.***

7. During the course of verification. Credence Constructions Company informed that they have entered

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into work order dated 25.08.2019 for Tower-A of project "Circuit Heights" at Plot No. GH-G4, Sector- 25, Jaypee Sports City, Yamuna Expressway, Gautam Budh Nagar, UP. The dismantling of the tower columns has been carried for Tower-A. Further the material, labour and machinery was mobilized at site. As per procedure, after dismantling of the columns the bar winding was to be carried out. Payment of Rs. 15 lakh has been received from MSA developers Pvt. Ltd. The work was to be completed within 18 months. But, after the order of Hon'ble NCLT, the construction at the site has been stopped.

8. During the course of verification, Senior Manager, Axis Bank, Laxmi Nagar Branch, Delhi informed that MSA Developers Ltd. has opened three (03) bank accounts (1) A/c No. 919020067121178 (collection account), (2) A/c No. 919020067263900 (expense account) 85 (3) A/c No. 919020067316389 (RERA account). Since account opening date, there is no transaction in account and all accounts are having zero balance as on 21.10.2019. Garima Gupta is authorized to operate these accounts singly.

9. That during verification project site was visited and it was found that the site office has been constructed but not found functioning. The DG sets have been mobilized. Storage room for cement has been constructed and the cement at the site has been mobilized. Tower Crane has been mobilized at the site however it is not installed till now. Part barricading work has been done. At present no construction work is going on at project site. The construction has been stopped, as the Hon'ble NCLT vide order dated 11.10.2019, has appointed Interim Resolution Professional, on a petition filed by one of the complainant namely Ravinder Aggarwal & Ors."

25. The judgment dated 11.10.2019 of the National Company Law Tribunal, New Delhi in case titled as **"Ravinder Aggarwal & Ors. Vs.**

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MSA Developers Pvt. Limited” in C.P. No. IB-806(PB)/2019 under Section 7 of The Insolvency and Bankruptcy Code, 2016, an application had been filed to trigger the Corporate Insolvency Resolution Process in the matter of MSA Developers Private Limited the 'Corporate Debtor'. Vide the said judgment dated 11.10.2019 of the NCLT in C.P. No. IB-806(PB)/2019, it was directed vide paragraphs 24, 25, 26, 27, 28, 29, 30 & 31 as under:-

“24. As a sequel to the above discussion, this petition is admitted and Shri Rabindra Kumar Mintri is appointed as an Interim Resolution Professional.

25. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

'(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in

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respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

27. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the Central Government in consultation with any financial regulator; (b) a surety in a contract of guarantor to a Corporate Debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other services or supplies as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate / Persons) Regulations, 2016.

28. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, inter alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code, He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else the Interim Resolution Professional/Resolution Professional would

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be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional/Resolution Professional shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

29. Directions are also issued to the Ex-Management/Auditors etc. to provide all the documents in their possession and furnish every information in their knowledge as required under Section 19 of the Code to the Interim Resolution Professional within a period of one week from today otherwise coercive steps to follow.

30. We direct the Financial Creditors to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 5 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditors. The amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditors.

31. Before parting we must notice the complaint made against Financial Creditors in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount due. This function is required to be performed by the Information Utility which is not yet fully functional. Therefore, Resolution Professional may ask the ex-promoter/director of the Corporate Debtor for any such correction if need be and act accordingly by placing it before the Financial Creditors as it is only fair to do so.”

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26. Vide the status report of the State dated 06.01.2020, it was reported to the effect:-

“9. Vide order dated 10.04.2019, this Hon’ble Court pleased to refer the present matter to Delhi High Court Mediation and Conciliation Centre for mediation proceedings between both the parties. As per record, the first settlement Agreement was drawn on 20.05.2019. On 20.05.2019, the Settlement Agreement was signed by 12 allottees & other allottees have furnished their affidavits agreeing on the settlement. Thus on 20.05.2019 in all 55 allottees (41 complainants of present case) entered into settlement with the accused company. Further, on 02.09.2019 & 12.09.2019, 08 more allottees (06 complainants of present case) entered into settlement with the accused company. Furthermore, 12 complainants have been shifted to another projects.

10. The basis of Settlement Agreements, which were executed before Delhi High Court Mediation and Conciliation Centre was to complete the abandoned project in time bound manner but the same was not completed. Hence, the settlement with such large number of complainants/allottees is still to be put to execution. Apparently, none of the three settlements (executed before Mediation Centre) has yet been executed. Entering into such settlements without their executions would remain bald promises.

11. The Hon’ble NCLT vide its order dated 11.10.2019, has appointed Interim Resolution Professional, on a petition filed by one of the complainant namely Ravinder Aggarwal & Ors against the accused company. At present no construction work is going on at project site.

12. Charge-sheets against accused Madhav Saran Agarwal, Alka Agarwal, Mrs. Garima Gupta, Sanjay Garg (without arrest) & Rajesh Pandey (without arrest)

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have been filed before the Ld.Trial Court. Accused Madhav Saran Agarwal & Alka Agarwal were granted bail on 21.10.2019 & 22.10.2019 respectively by the Ld. Sessions Court, Tis Hazari Court, Delhi. Accused Sanjay Garg (charge sheeted without arrest) was granted bail on 29.07.2019 by the Ld. Sessions Court, Tis Hazari Court, Delhi and accused Rajesh Pandey (charge sheeted without arrest) was granted bail on 08.08.2019 by the Ld. Trial Court, Tis Hazari Court, Delhi.

13. In view of evidence emerged during investigation it has been established that the accused (Petitioner herein) has committed an offence against the state at large by committing serious economic offences under section 406/409/420/120-B IPC.”,

The status report dated 06.01.2020 thus, makes it clear that all the other accused namely Madhav Saran Agarwal, Alka Agarwal, Sanjay Garg and Rajesh Pandey have since been granted bail by the learned Trial Court, and that it is only the present applicant who is on interim bail.

27. The charge sheet in the matter against the present applicant has already been filed as submitted through the status report dated 06.01.2020. The State through this status report has submitted that the basis of the settlement agreements before the Delhi High Court Mediation and Conciliation Centre was to complete the abandoned project in a time bound manner but that the same was not completed and that the settlement with such large number of complainants/allottees was still to be put to execution and just entering into such settlements without their executions would remain bald promises. *The State however affirmed the factum that vide order*

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dated 11.10.2019, an Interim Resolution Professional had been appointed against the accused company and there was no construction work going on at the site.

28. As has already been observed elsewhere hereinabove in terms of the order dated 11.10.2019 vide paragraph 26 thereof of the NCLT, the moratorium is in place as directed therein.

29. Out of 93 investors, a settlement has been arrived at with 78 investors as submitted on behalf of the petitioner on 15.11.2019, which has not been refuted on behalf of the State. As also observed hereinabove and observed vide order dated 15.11.2020, construction at the site had stopped in view of order dated 11.10.2019 of the NCLT and all other accused persons apart from the petitioner are on bail in this case. Though, undoubtedly, there is an intervention application in the matter of which notice was also issued and the response thereto has been filed on behalf of the petitioner to CRL.M.A.34721/2019 filed by the complainants of FIR No.22/2019, PS EOW, Mandir Marg, New Delhi, the same relates as rightly submitted on behalf of the petitioner to another property i.e. MSX Mall, Greater Noida, U.P. qua which also an Interim Resolution Professional has been appointed in the insolvency proceedings that are pending before the NCLT and that though there are allegations of alleged criminal breach of trust, fraud and forgery qua multiple buyers, it is apparent that the same cannot be subject matter of proceedings in relation to FIR No.46/2018, PS EOW which relates to a project namely "MSA Circuit Heights" of MSA Developers Pvt. Ltd. in relation to which investigation has already been completed and as per the response of the petitioner to

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CRL.M.A.34721/2019, investigation in the matter in FIR No.22/2019, PS EOW, Mandir Marg was still in progress as on 13.11.2019 and the Court is thus of the considered view that the aspect of pendency of FIR No.22/2019, PS EOW cannot be connected with the present proceedings in which there has been a settlement arrived at between 78 complainants/investors out of 93 investors as observed in proceedings dated 11.10.2019 which has not been refuted on behalf of the State. The construction at the site as observed hereinabove had been stopped in terms of the order of the NCLT, and there is nothing on the record to indicate that the petitioner in any manner has violated any of the conditions as imposed for the grant of interim bail from the date 04.03.2019 in terms of an order dated 25.02.2019 of the Sessions Court; Settlements have been arrived at between 78 out of 93 investors in relation to the project MSA Circuit Heights, with the moratorium having been placed vide the order dated 11.10.2019 of the NCLT, and it is apparent thus prima facie that there is nothing to indicate that the petitioner is intentionally not fulfilling the terms of the settlement between the parties and there is nothing also to indicate that the applicant shall in any manner evade the due process of law.

30. The Hon'ble Supreme Court in "**Vaman Narain Ghiya vs State Of Rajasthan**" decided on **12 December, 2008** observed vide paragraphs 21, 22, 23, 24, 27, 40, 41 & 42 to the effect:-

"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

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considered a punishment, unless it can be 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 un- convicted 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 a 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 un- convicted person for the purpose of giving him a taste of imprisonment as a lesson.

24. In the instant case, as 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 has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering 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

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requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice.

XXX XXX XXX

27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.

XXX XXX XXX

40. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

41. This Court in Gurcharan Singh and Ors. Vs. State AIR 1978 SC 179 observed that two paramount considerations, while considering petition for grant of bail in non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure of the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.

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42. When the under trial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case.",

In “**Dipak Shubhashchandra Mehta vs. C.B.I. and Ors.**”

MANU/SC/0114/2012 decided on 10.02.2012, it has been observed to the effect:-

“The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The Court granting bail has to consider, among other circumstances, the factors such as (a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence ; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and : (c) prima facie satisfaction of the Court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted. Considering the present scenario and there is no possibility of commencement of trial in the near future and also of the fact that the appellant is in custody from 31.3.2010, except the period of interim bail, i.e., from 15.9.2011 to 30.11.2011, it is held that it is not a fit case to fix any outer limit taking note of the materials collected by the prosecution. The Supreme Court has repeatedly held that when the undertrial prisoners are detained in jail

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custody to an indefinite period. Article 21 of the Constitution of India is violated.”,

In “**Sanjay Chandra Vs. CBI**” AIR 2012 SC 830 in Criminal Appeal No. 2178 of 2011 (Arising out of SLP (Crl.) No. 5650 of 2011) decided on 23.11.2011, observed vide paragraphs 16 to 28 to the effect:-

“16. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution. In the case of State of Rajasthan v. Balchand MANU/SC/0152/1977 : (1977) 4 SCC 308, this Court opined:

2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the Petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the Petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the Petitioner in this case is that, while he has been on bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances

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and the social milieu do not militate against the Petitioner being granted bail at this stage. At the same time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the Petitioner will report himself before the police station at Baren once every fortnight.

17. In the case of Gudikanti Narasimhulu v. Public Prosecutor MANU/SC/0089/1977 : (1978) 1 SCC 240, V.R. Krishna Iyer, J., sitting as Chamber Judge, enunciated the principles of bail thus:

3. What, then, is "judicial discretion" in this bail context In the elegant words of Benjamin Cardozo :The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy , disciplined by system, and subordinated to "the primordial necessity of order in the social life". Wide enough in all conscience is the field of discretion that remains.

Even so it is useful to notice the tart terms of Lord Camden that the discretion of a Judge is the law of tyrants: it is always unknown, it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is often times caprice; in the worst, it is every vice, folly and passion to which human nature is liable...

Perhaps, this is an overly simplistic statement and we must remember the constitutional focus in Articles 21 and 19 before following diffuse observations and practices in the English system. Even in England there is a growing awareness that the working of the bail system requires a second

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look from the point of view of correct legal criteria and sound principles, as has been pointed out by Dr Bottomley.

6 . Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the Court punishing him with imprisonment. In this perspective, relevance of considerations is regulated by their nexus with the likely absence of the applicant for fear of a severe sentence, if such be plausible in the case. As Erle. J. indicated, when the crime charged (of which a conviction has been sustained) is of the highest magnitude and the punishment of it assigned by law is of extreme severity, the Court may reasonably presume, some evidence warranting, that no amount of bail would secure the presence of the convict at the stage of judgment, should he be enlarged. Lord Campbell, C.J. concurred in this approach in that case and Coleridge J. set down the order of priorities as follows:

I do not think that an accused party is detained in custody because of his guilt, but because there are sufficient probable grounds for the charge against him as to make it proper that he should be tried, and because the detention is necessary to ensure his appearance at trial. It is a very important element in considering whether the party, if admitted to bail, would appear to take his trial; and I think that in coming to a determination on that point three elements will generally be found the most important: the charge, the nature of the evidence by which it is

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supported, and the punishment to which the party would be liable if convicted. In the present case, the charge is that of wilful murder; the evidence contains an admission by the prisoners of the truth of the charge, and the punishment of the offence is, by law, death.

7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.

9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record - particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a Defendant is therefore not an exercise in irrelevance.

13. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends Yes, it has. The panic which might prompt the

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accused to jump the gauntlet of justice is less, having enjoyed the confidence of the Court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding - if that be so - of innocence has been recorded by one Court. It may not be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio- geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and police prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the Court into a complacent refusal.

18. In Gurcharan Singh v. State (Delhi Admn.) MANU/SC/0420/1978 : (1978) 1 SCC 118, this Court took the view:

22. In other non-bailable cases the Court will exercise its judicial discretion in favour of granting bail subject to sub- section (3) of Section 437 Code of Criminal Procedure if it deems necessary to act under it. Unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence punishable with death or

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imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to Section 437(1) Code of Criminal Procedure and in a case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of such an offence. This will, however, be an extraordinary occasion since there will be some materials at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence.

24. Section 439(1) Code of Criminal Procedure of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), Code of Criminal Procedure against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) Code of Criminal Procedure of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) Code of Criminal Procedure of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life

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being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.

19. In Babu Singh v. State of U.P. MANU/SC/0059/1978 : (1978) 1 SCC 579, this Court opined:

8. The Code is cryptic on this topic and the Court prefers to be tacit, be the order custodial or not. and yet, the issue is one of liberty, justice, public safety and burden on the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. As Chamber Judge in this summit Court I had to deal with this uncanalised case flow, ad hoc response to the docket being the flickering candle light. So it is desirable that the subject is disposed of on basic principle, not improvised brevity draped as discretion. Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorise impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right.

...

16. Thus the legal principle and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to

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find whether he has a bad record-particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a Defendant, is therefore not an exercise in irrelevance.

17. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice-to the individual involved and society affected.

18. We must weigh the contrary factors to answer the test of reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. and if public justice is to be promoted, mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, "community roots" of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our

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sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.

20. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the Court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding - if that be so – of innocence has been recorded by one Court. It may be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and police prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the Court into a complacent refusal.

20. In Moti Ram v. State of M.P. MANU/SC/0132/1978 : (1978) 4 SCC 47, this Court, while discussing pre-trial detention, held:

14. The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are

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imposed on convicted Defendants. The jailed Defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.

21. The concept and philosophy of bail was discussed by this Court in Vaman Narain Ghiya v. State of Rajasthan MANU/SC/8394/2008 : (2009) 2 SCC 281, thus:

6. "Bail" remains an undefined term in Code of Criminal Procedure. Nowhere else has the term been statutorily defined. Conceptually, it continues to be understood as a right for assertion of freedom against the State imposing restraints. Since the UN Declaration of Human Rights of 1948, to which India is a signatory, the concept of bail has found a place within the scope of human rights. The dictionary meaning of the expression "bail" denotes a security for appearance of a prisoner for his release. Etymologically, the word is derived from an old French verb "bailer" which means to "give" or "to deliver", although another view is that its derivation is from the Latin term "baiulare", meaning "to bear a burden". Bail is a conditional liberty. Stroud's Judicial Dictionary (4th Edn., 1971) spells out certain other details. It states:

...when a man is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, so that he is restrained of his liberty. And, being by law bailable, offereth surety to those which have authority to bail him, which sureties are bound for him to the King's use in a certain sums of money, or body for body, that he shall appear before the justices of goal delivery at the next sessions, etc. Then upon the bonds of these sureties, as is aforesaid, he is bailed that is to say, set at liberty until the day appointed for his appearance.

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Bail may thus be regarded as a mechanism whereby the State devolutes upon the community the function of securing the presence of the prisoners, and at the same time involves participation of the community in administration of justice.

7. Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demands, namely, on the one hand the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence viz. the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others to keep off from us, the more liberty we have. (See A.K. Gopalan v. State of Madras)

8. The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt.

22. More recently, in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra MANU/SC/1021/2010 : (2011) 1 SCC 694, this Court observed that "(j)ust as liberty is precious to an individual, so is the society's interest in

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maintenance of peace, law and order. Both are equally important." This Court further observed:

116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case. This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused (See Babba v. State of Maharashtra (2005) 11 SCC 569, Vivek Kumar v. State of U.P. MANU/SC/0890/2000 : (2000) 9 SCC 443, Mahesh Kumar Bhawsinghka v. State of Delhi MANU/SC/2641/2000 : (2000) 9 SCC 383).

23. The principles, which the Court must consider while granting or declining bail, have been culled out by this Court in the case of Prahlad Singh Bhati v. NCT, Delhi MANU/SC/0193/2001 : (2001) 4 SCC 280, thus:

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 the 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

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this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

24. In State of U.P. v. Amarmani Tripathi MANU/SC/0677/2005 : (2005) 8 SCC 21, this Court held as under:

18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see Prahlad Singh Bhati v. NCT, Delhi and Gurcharan Singh v. State (Delhi Admn.)). While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan: (SCC pp.535-36, para 11)

11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted

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particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas.)

22. While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary.

25. Coming back to the facts of the present case, both the Courts have refused the request for grant of bail on two grounds: The primary ground is that offence alleged against the accused persons is very serious involving deep rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property, forgery for the purpose of cheating using as genuine a forged document. The punishment of the offence is punishment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. The grant or

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refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required. This Court in Gurcharan Singh and Ors. v. State AIR 1978 SC 179 observed that two paramount considerations, while considering petition for grant of bail in non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure of the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.

26. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the Appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the Appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the Appellants on bail when there is no serious contention of the Respondent that the accused, if released on bail, would interfere with the

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trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet. This Court, in the case of State of Kerala v. Raneef MANU/SC/0001/2011 : (2011) 1 SCC 784, has stated:

15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the Respondent has already spent 66 days in custody (as stated in Para 2 of his counter affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille.

27. In 'Bihar Fodder Scam', this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the Appellants were in jail for a period more than six months as on the date of passing of the order, was of the view that the further detention of the Appellants as pre-trial prisoners would not serve any purpose.

28. 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 jeopardize 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.

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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 allay the apprehension expressed by CBI.”

31. As in the instant case the charge sheet has already been filed, and as apparently all other accused in the instant case other than the applicant are on bail coupled with the factum that the applicant has been making efforts for settlement with the complainant as brought forth through the record prima facie and as there is nothing also on the record to suggest that the applicant has in any manner misused the grant of interim protection granted to her, it is considered appropriate that the prayer made by the applicant seeking the grant of bail in FIR No.46/2018, PS EOW Cell, Mandir Marg in which all other accused persons are on bail as brought forth through the status report dated 06.01.2020 of the State is allowed and the applicant is thus, allowed to be released on bail during the pendency of FIR No.46/2018, PS EOW, Mandir Marg, New Delhi subject to the applicant filing a bail bond in the sum of Rs.2 Lacs (Rupees Two Lacs) with one surety of the like amount to the satisfaction of the learned Trial Court with directions that:

- she shall under no circumstance leave the country;
- shall inform the Investigating Officer also if she travels out of the limits of Delhi and NCR;

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- she shall keep her mobile phone on at all times and she shall drop a PIN on the google map to ensure that her location is available to the Investigating Officer, and
- she shall commit no offence whatsoever during the period that she is on bail.

32. Thus, the prayer made by the applicant seeking the extension of interim bail is also disposed of accordingly.

33. Nothing stated hereinabove shall amount to any expression on the merits or demerits of the trial qua FIR no.46/2018 PS EOW Cell, Mandir Marg, New Delhi.

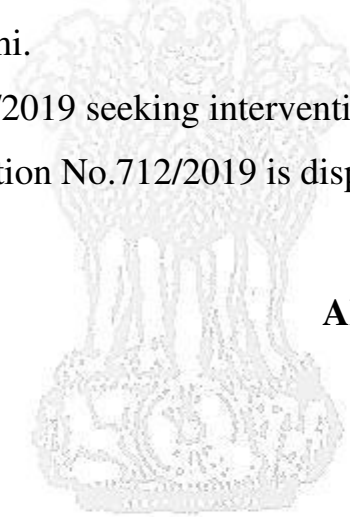
34. CRL.M.A.34721/2019 seeking intervention is declined.

35. The Bail Application No.712/2019 is disposed of accordingly.

SEPTEMBER 1, 2021

'anurag chandra'

ANU MALHOTRA, J.



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