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

Date of decision: 08th November, 2021

IN THE MATTER OF:

+ **W.P.(CRL) 962/2021 & CRL.M.A. 7009/2021**

ASHA JAIN

..... Petitioner

Through Mr. Zeeshan Diwan, Advocate

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Through Mr. Avi Singh, ASC for the State
with SI Satish Dagar, PS EOW.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This writ petition has been filed seeking the following prayers:-

*"a) Pass an order Under Article 226 and 227 of the Constitution of India r/w 482 and 438 CrPC directing grant of anticipatory bail in all FIRs and proceedings arising out of project AVJ Heights including but not limited to FIRs mentioned in Para 6 herein; and/or
b) Pass an order Under Article 226 and 227 of the Constitution of India r/w 482 r/w 438 CrPC directing Protection from any coercive steps/arrest in all FIRs and proceedings arising out of project AVJ Heights including but not limited to FIRs mentioned in Para 6 herein during pendency of the present petition; and/or"*

2. The facts leading to the instant writ petition are as under –:

a) It is stated that the petitioner herein was a director of AVJ Developers India Pvt. Ltd from 22.06.2010 to 30.03.2016. It is

stated that the entire day-to-day activities of the said company and its affairs, including the real estate projects, were looked after by the whole-time Directors including her husband, Vimal Jain.

- b) It is stated that due to disputes between the buyers and the developer, her husband has been arraigned as an accused in 48 FIRs and the petitioner herein is also an accused in many of the FIRs and 8 of the FIRs have been registered in Delhi which are as follows:-

Sr. No.	FIR No.	Dated	Police Station
1.	50/2017	04.02.2017	Anand Vihar
2.	31/2017	23.02.2017	EOW
3.	37/2017	08.03.2017	EOW
4.	115/2017	12.07.2017	EOW
5.	426/2017	28.08.2017	Anand Vihar
6.	173/2018	30.08.2018	EOW
7.	430/2018	19.12.2018	Anand Vihar
8.	132/2019	15.07.2019	EOW

- c) It is stated that the petitioner's husband was arrested and was in prison from 24.12.2019 to 28.02.2021. It is stated that the petitioner's husband filed an SLP in the Supreme Court, being

SLP (CRL) No.175/2021. It is stated that the Supreme Court after issuing notice granted interim bail to the petitioner's husband on 26.02.2021 by passing the following order:-

"In order to facilitate the construction of the remaining flats so that the requirements of the remaining flats buyers can be met, we are inclined to grant interim bail to the petitioner, initially for a period of six months.

We are told that the passport of the petitioner already stands deposited.

The petitioner will file a progress report of what steps he has taken during this period of time and we make it clear that unless he shows sufficient progress, his continued enlargement will be in peril."

- d) It is stated that in the project, where the disputes have arisen, about 1,400 flats are under occupation.
- e) It is stated that the petitioner, who was not involved in the day-to-day affairs of the company, is running from pillar to post trying to defend litigations arising out of the disputes with homebuyers, lenders, banks/financial institutions relating to the AVJ Heights project and AVJ Developers India Pvt. Ltd. It is stated that cases under Section 138 of the Negotiable Instruments Act have been filed.
- f) It is stated in the writ petition that proceedings under Section 82 CrPC were initiated against the petitioner, and she was declared as a proclaimed offender by an order dated 22.10.2019 in FIR No.115/2017 registered at Police Station EOW. The said order was challenged in a writ petition before the learned Additional Sessions Judge, Karkardooma Courts in Criminal Revision

Petition No.93/2020 and the order declaring the petitioner as a proclaimed offender was set aside by order dated 01.04.2021. However, it was clarified in the said order that no protection has been granted to the petitioner.

- g) It is stated that the petitioner has filed the instant writ petition in view of the multiple FIRs being registered against her and her husband. It is stated that the allegations in the FIRs are identical and that the police wants to arrest the petitioner.
- h) It is stated that the disputes are primarily between the company and the allottees which are essentially civil disputes yet, multiple FIRs have been registered against the petitioner's husband.
- i) It is stated that about 1,400 persons have already occupied the flats and it cannot be said that there was an intention to cheat from the very beginning. It is stated that the petitioner is a housewife and is not directly involved in the project. The petitioner, therefore, has approached this Court by filing the instant writ petition praying that she should be granted anticipatory bail in all the FIRs and proceedings arising out of the project AVJ Heights including 8 FIRs mentioned hereinabove.
- j) Notice was issued on 11.05.2021. Status Report has been filed. In the Status Report, it is mentioned that the allegation against the company and its directors is that the company and its directors have sold the flats to more than one buyer. It is stated that more than 100 complaints have been received against the accused company. It is also stated in the Status Report that the petitioner herein was a Director of company and was involved in key policy

decisions taken by the accused company as well as in respect of day-to-day affairs of the company and M/s AVJ Developer India Pvt. Ltd is the beneficiary of the cheated amount received from complainant/buyers and banks.

- k) It is stated that, during the investigation it was revealed that various bank accounts in the name of the accused company i.e. AVJ Developers India Pvt Ltd. and the accused persons had taken a huge amount of loan from various banks in the name of accused company and transferred the same to various other bank accounts.
- l) It is stated that the accused builder i.e. the husband of the petitioner and the petitioner herein had mortgaged the same flats in two or more banks and had taken loan in the name of AVJ Developers India Pvt. Ltd.

3. Heard Mr. Zeeshan Diwan, learned counsel for the petitioner and Mr. Avi Singh, learned ASC for the State and perused the material on record.

4. Mr. Zeeshan Diwan, learned counsel for the petitioner states that since all the FIRs are more or less identical in nature and arises out of disputes between buyers and builder, they are essentially civil in nature. It is stated that the fact that a good portion of the project has been completed and people have already started occupying the flats shows that there was no intention to cheat from the beginning. Learned counsel for the petitioner relies on the order dated 26.02.2021, passed by the Supreme Court in SLP(CRL) No.175/2021 granting interim protection to the petitioner's husband. Learned counsel for the petitioner has also placed reliance on the judgment passed by the Supreme Court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors., **2021 SCC OnLine SC 315**.

5. *Per contra*, Mr. Avi Singh, learned ASC opposes the instant writ petition by contending that the Code of Criminal Procedure provides that when a person apprehends arrest and where a person has reason to believe that he/she might be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under Section 438 CrPC and under Section 438 CrPC in the event of such arrest, he shall be released on bail after taking into consideration the nature and gravity of the accusation and the antecedents of the applicant including the fact as to whether the applicant has previously undergone imprisonment on conviction by a Court in respect of any cognisable offence and the possibility of the applicant fleeing from justice if granted bail in the event of arrest in the FIR. He, therefore, states that the petitioner has to approach the competent court by filing an application under Section 438 CrPC and obtain the orders. He states that the petition is not maintainable. Mr. Avi Singh, also places reliance on the charge sheet to contend that this is not a case where the Court should grant a blanket order restraining the prosecution from arresting the petitioner in all the cases pertaining to the project.

6. Instead of approaching the appropriate Court under Section 438 CrPC, the petitioner has chosen to file the present petition seeking anticipatory bail in all the FIRs and the proceedings which have arisen and which are likely to arise from the said AVJ Heights project. A reading of the Status Report indicates that apart from the dispute between the buyers, it also transpires that the loan amount was taken by the AVJ Developers India Pvt. Ltd. and some of the flats had been sold to more than one buyer. In view of this, this Court is not inclined to grant an omnibus protection to the petitioner for the

FIRs which have been filed and which are likely to be filed in relation to the cases filed against the AVJ Developers India Pvt. Ltd. and in relation to the AVJ Heights project.

7. Mr. Zeeshan Diwan, learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors., **2021 SCC OnLine SC 315** stating that the powers under Section 226 of the Constitution of India can be exercised to prevent the abuse of process of law by authorities indiscriminately making pre-arrest of the accused persons. However, the very same judgment also states that in case the accused is named in the FIR/complaint and apprehends arrest, he has a remedy to apply for anticipatory bail under Section 438 CrPC and the condition of Section 438 CrPC being satisfied, he may be granted anticipatory bail by the competent court. The Supreme Court in the said judgment stated that the High Court has to ensure that the power under Section 226 of the Constitution of India should not be exercised liberally so as to convert it into Section 438 CrPC proceedings and such powers should be exercised sparingly where it is absolutely warranted and justified. Relevant portion of the said judgment reads as under:-

*"64. We have come across many orders passed by the High Courts passing interim orders of stay of arrest and/or "no coercive steps to be taken against the accused" in the quashing proceedings under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India with assigning any reasons. We have also come across number of orders passed by the High Courts, while dismissing the quashing petitions, of not to arrest the accused during the investigation or till the chargesheet/final report under Section 173 Cr.P.C is filed. As **observed hereinabove, it is***

the statutory right and even the duty of the police to investigate into the cognizable offence and collect the evidence during the course of investigation. There may be requirement of a custodial investigation for which the accused is required to be in police custody (popularly known as remand). Therefore, passing such type of blanket interim orders without assigning reasons, of not to arrest and/or “no coercive steps” would hamper the investigation and may affect the statutory right/duty of the police to investigate the cognizable offence conferred under the provisions of the Cr.P.C. Therefore, such a blanket order is not justified at all. The order of the High Court must disclose reasons why it has passed an ad-interim direction during the pendency of the proceedings under Section 482 Cr.P.C. Such reasons, however brief must disclose an application of mind.

65. The aforesaid is required to be considered from another angle also. Granting of such blanket order would not only adversely affect the investigation but would have far reaching implications for maintaining the Rule of Law. Where the investigation is stayed for a long time, even if the stay is ultimately vacated, the subsequent investigation may not be very fruitful for the simple reason that the evidence may no longer be available. Therefore, in case, the accused named in the FIR/complaint apprehends his arrest, he has a remedy to apply for anticipatory bail under Section 438 Cr.P.C. and on the conditions of grant of anticipatory bail under Section 438 Cr.P.C being satisfied, he may be released on anticipatory bail by the competent court. Therefore, it cannot be said that the accused is remediless. It cannot be disputed that the anticipatory bail under Section 438 Cr.P.C. can be granted on the conditions prescribed under Section 438 Cr.P.C. are satisfied. At the same time, it is to be noted that arrest is not a must whenever an FIR of a cognizable offence is lodged. Still in case a person is apprehending his arrest in connection with an FIR disclosing cognizable offence, as observed

hereinabove, he has a remedy to apply for anticipatory bail under Section 438 Cr.P.C. As observed by this Court in the case of Hema Mishra v. State of Uttar Pradesh, (2014) 4 SCC 453, though the High Courts have very wide powers under Article 226, the powers under Article 226 of the Constitution of India are to be exercised to prevent miscarriage of justice and to prevent abuse of process of law by the authorities indiscriminately making pre-arrest of the accused persons. It is further observed that in entertaining such a petition under Article 226, the High Court is supposed to balance the two interests. On the one hand, the Court is to ensure that such a power under Article 226 is not to be exercised liberally so as to convert it into Section 438 Cr.P.C. proceedings. It is further observed that on the other hand whenever the High Court finds that in a given case if the protection against pre-arrest is not given, it would amount to gross miscarriage of justice and no case, at all, is made for arrest pending trial, the High Court would be free to grant the relief in the nature of anticipatory bail in exercise of its powers under Article 226 of the Constitution of India, keeping in mind that this power has to be exercised sparingly in those cases where it is absolutely warranted and justified. However, such a blanket interim order of not to arrest or "no coercive steps" cannot be passed mechanically and in a routine manner."

(emphasis supplied)

8. The petitioner has approached the Supreme Court under Article 136 of the Constitution of India. The Supreme Court is overseeing the progress of the project. In that light, the Supreme Court has passed the directions granting interim bail to the petitioner's husband. When the learned counsel for the petitioner was specifically asked as to why the petitioner is not approaching the Apex Court, he states that he has instructions not to agree to withdraw the instant petition to approach the Apex Court. This Court feels that the petitioner does not want to approach the Supreme Court and be

subjected to monitoring by the Supreme Court lest there was no reason for the petitioner not to approach the Apex Court for the same relief which has been given to the petitioner's husband.

9. The Status Report reveals that in all the 8 FIRs, charge sheet has been filed. The Apex Court in Satender Kumar Antil v. Central Bureau of Investigation & Anr., **2021 SCC OnLine SC 922** has already issued guidelines regarding arrest in those cases where charge sheets have been filed without arrest.

10. In view of the fact that there are allegations that flats have been sold to more than one buyer and that same flat has been mortgaged to more than one buyer for the security of the loans obtained, this Court is not inclined to pass an omnibus order in favour of the petitioner granting bail in the event of arrest in the 8 FIRs which are mentioned in the writ petition and all other FIRs which are likely to be filed against AVJ Developers India Pvt. Ltd. and the petitioner in relation to AVJ Heights project.

11. Accordingly, the petition is dismissed along with the pending application(s), if any.

NOVEMBER 08, 2021
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SUBRAMONIUM PRASAD, J