

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

Date of decision: 21st October, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 1547/2021 & CRL.M.(BAIL) 813/2021**

MITHUN BHATNAGAR

..... Petitioner

Through Mr. Mohit Mathur, Senior Advocate
with Mr. Tarun Khanna, Mr. Vinayak
Chitale and Mr. Harsh Gautam,
Advocates

versus

THE STATE (GNCT OF DELHI)

..... Respondent

Through Ms. Meenakshi Chauhan, APP with
SI Naresh Kumar PS Connaught
Place

+ **BAIL APPLN. 1715/2021 & CRL.M.(BAIL) 814/2021**

MITHUN BHATNAGAR

..... Petitioner

Through Mr. Mohit Mathur, Senior Advocate
with Mr. Tarun Khanna, Mr. Vinayak
Chitale and Mr. Harsh Gautam,
Advocates

versus

THE STATE

..... Respondent

Through Ms. Meenakshi Chauhan, APP with
SI Naresh Kumar PS Connaught
Place

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioner has filed the instant petitions under Section 439 Cr.P.C seeking bail in FIR No.45/2020 dated 19.07.2020, registered at Police Station Connaught Place for offences under Sections 420/468/471/120B IPC

and FIR No.46/2020 dated 20.07.2020, registered at Police Station Connaught Place for offences under Sections 420/468/471/120B IPC.

2. The allegation in the FIR No.45/2020 is that the complainant is a registered government licensed electrical contractor. It is stated that in the year 1996, the complainant had applied for an industrial plot with DSIDC (Delhi State Industrial Development Corporation) now known as DSIIDC (Delhi State Infrastructure Industries Development Corporation) under relocation scheme under the name of M/s D. K. Traders. It is stated that application No. 54114 was allotted to the complainant, however the said application/plot was cancelled in the year around 2001. It is stated that on 10.01.2019 one Mr. Vikram Saxena along with one Mr. Ajay Saxena came to the previous office of the complainant and enquired about M/s D.K. Traders, the business entity of the complainant. It is stated that since the complainant had shifted his office, Vikram Saxena met the complainant at his new office. It is stated that Mr. Vikram Saxena introduced himself as an employee of DSIDC by showing his I-Card and showed the complainant some papers having the complainant's application number with DSIDC for industrial plot for which he had applied in 1996, but had later been cancelled. It is stated that Mr. Vikram Saxena convinced the complainant by saying that the Government had allotted 10,000 new plots to those persons who were earlier denied industrial plots at the current market rate. It is stated that Mr. Vikram Saxena introduced Mr. Ajay Saxena as his senior colleague in Relocation Division with DSIDC and stated that he would complete all the necessary formalities in obtaining the industrial plot. It is stated that Mr. Vikram Saxena further told the complainant to come to the DSIDC office at Connaught Place for further clarification and gave his telephone number to

the complainant. It is stated that the complainant, in order to verify the same, went to the DSIDC office where he met Mr. Vikram Saxena who told complainant to wait downstairs near "*Jain Chawal Wala*" as it was not appropriate to talk in front of everyone. It is stated that after few minutes, Mr. Vikram Saxena then came downstairs along with the petitioner and introduced him as his senior under whom he was working. It is stated that they held a meeting where Mr. Vikram Saxena showed the complainant his old application papers of DSIDC in order to portray to the complainant that he had all the previous details of his cancelled plot. It is stated that the petitioner herein also confirmed that DSIDC was offering plots to the persons whose plots were cancelled earlier and that this was one in a lifetime opportunity. Mr. Vikram Saxena further said that he would provide an allocation letter for allotment of Industrial Plot within 2-3 days. It is stated that the complainant was convinced that Mr. Vikram Saxena was an employee of DSIDC. It is stated on 17.01.2019, Mr. Vikram Saxena called the complainant stating that his allotment letter was ready and asked him to come to office for collecting the same. It is stated that Mr. Vikram Saxena handed over allotment letter purported to be issued by DSIIDC *vide* No. DSIIDC/RULEC/54114 2016-17 dated 14.01.2019. It is stated that Vikram Saxena further called the complainant and asked him to provide all the documents as demanded in the letter within 15 days, otherwise the plot would be cancelled again. It is stated that Vikram Saxena further demanded Rs.5 lakhs as their liaison fee, for file charge, for application form and for further proceedings. It is stated that Vikram Saxena further told the complainant not to talk to anyone else in the DSIDC office. It is stated that the petitioner gave all the documents as demanded in the letter, such as Tax

returns, Vat Returns, Licence, Bank Statements etc. pertaining to his firm M/s D. K. Traders. It is stated that Mr. Vikram Saxena took all the documents as well as Rs.50,000/- Cash as his fees. It is stated that Vikram Saxena further told the complainant to arrange for money to be deposited in DSIDC as plot charges. It is stated that in first week of February 2019, Mr. Vikram Saxena called the complainant saying that process work had been completed, and that some cash and draft was to be deposited with DSIDC. It is stated that he told the complainant that his work had been done and he had been allotted a plot in Patparganj, and asked him to prepare a draft for Rs. 18,85,600/- in the name of DSIDC. It is stated that the complainant prepared a draft of Rs. 18,85,600/- dated 21.02.2019 from Indian Bank, Shalimar Bagh Branch, in favour of DSIDC and handed over the same to the Vikram Saxena on 22.02.2019 along with Rs.1,16,250/- in Cash as demanded. It is stated that for the above said transaction, Vikram Saxena gave a receipt of DSIDC dated 25.02.2019 to the complainant. It is stated that on several occasions Vikram Saxena either used to come to the office of the complainant or used to call him to his residence at Tilak Nagar under the garb of signing some papers and used to collect cash. It is stated that in the month of March 2019, the complainant was told that he had been allotted an industrial plot bearing Plot No. 9, Area 550 Sq. Mtrs, Patparganj Industrial Area, Delhi-110092 @ Rs. 30,200/- per sq. mtrs. totalling to Rs.16,61,00,000/- It is stated that the complainant was asked to arrange the said amount immediately so that the plot could be handed over to the complainant at an earliest. It is stated that on one pretext or the other, the complainant paid a total sum of Rs.1,24,19,000.00 (One Crore Twenty Four lacks Ninteen Thousand Only) to the accused. It is stated that on 14.02.2020,

Vikram Saxena and Ajay called the complainant, and asked him to meet them and told him that all formalities had been completed and possession of the plot would be handed over to him very soon and demanded Rs. One Lakh in cash. It is stated that on 19.03.2020 Vikram Saxena took the copy of the Aadhar Card, Passport, Proof of residence of the complainant for completing the remaining formalities and took Rs. One Lakh in cash from him. It is stated that on 21.05.2019, Mr. Vikram Saxena along with Mr. Ajay again met the complainant and showed him an allotment letter/indemnity bond of the industrial plot and demanded draft of the balance amount to the tune of Rs.47 lakhs and also Rs.1,50,000/- in Cash. It is stated that the complainant demanded all his papers deposited by him in DSIDC and also asked the complainant to give the final allotment letter to him to enable him to get loan from his bank. It is stated on 01.06.2020, the complainant contacted Mr. Vikram Saxena who told the complainant that he was going to arrange a final meeting with his seniors and asked the complainant to come to the office in Connaught Place on 02.06.2020 so that Vikram Saxena could hand over all the documents to the complainant. It is stated that on 02.06.2020 when the complainant called Vikram Saxena his phone was switched off along with the cell phones of Ajay and the petitioner herein. It is stated that the complainant got frightened and on 03.06.2020, he went to residential house of Vikram Saxena, where he found the that the house was locked and the neighbours told the complainant that Vikram Saxena had left the house in and around the month of March 2020. It is stated that the Complainant also met the wife of the owner of the house who refused to divulge any information regarding Vikram Saxena. It is stated that on 10.6.2020, the complainant went to the office of DSIDC where he was told

that the receipts/letters so issued by accused persons were fake. On this complaint FIR No.45/2020 dated 19.07.2020, was registered at Police Station Connaught Place for offences under Sections 420/468/471/120B IPC.

3. The allegations in FIR No. 46/2020 dated 20.07.2020 is that in 1995 the complainant had applied for an industrial plot in the reallocation scheme of DSIDC, but his file was rejected and he got his money back from DSIDC. It is stated that in February 2018, when he was present at his home at House No. A-44, Gali No. 5, Bhajanpura, Delhi, two unknown persons came to his house and told him that they were from DSIDC, Connaught Place, New Delhi and showed them their identity cards. It is stated that those persons told the complainant that he had applied for an industrial plot in 1996, and his file had been reopened. It is stated that those people also gave the complainant a mobile number of their officer, one Vikram Saxena. It is stated that in March 2018, complainant's son, namely Gaurav Arora, called on the mobile number given by those persons and asked about the details of the plot. It is stated that Vikram Saxena introduced himself as an employee of DSIDC. It is stated that thereafter the complainant called Vikram Saxena and asked him to meet at the DSIDC office in Connaught Place. It is stated that the complainant along with his son met with Vikram Saxena who showed them some file of DSIDC Plot issued in 1996 and some receipts of Rs. 60,000/-. It is stated that on seeing the papers and the receipts, the complainant believed that Vikram Saxena is the employee of DSIDC. It is stated that Vikram Saxena told the complainant that he was an officer of DSIDC and asked the complainant to pay extra money if he was interested in taking a plot. It is stated that Vikram Saxena called the complainant to his

house for further talks. On 11.04.2018, the complainant met Vikram Saxena at his home. It is further stated that at his house, Vikram Saxena told the complainant that in order to get the DSIDC Plot he would have to pay about Rs. 27,00,000/- out of which Rs. 5,00,000/- would be paid through cash and the other remaining amount would be deposited through DD in the name of DSIDC. On 13.04.2018, complainant along with his son met with Vikram Saxena who was accompanied by one Ajay Saxena. It is stated that Vikram Saxena introduced Ajay Saxena as his boss to the complainant. It is stated that the Complainant paid Rs. 2,50,000/- to the alleged person and got a receipt. It is stated that the Complainant paid Rs. 5,79,480/- through DD on 18.06.2018, Rs. 5,85,615/- through DD on 16.07.2018, Rs. 5,35,000/-, and Rs. 4,28,975/- through DD in September 2018 and 17.10.2018 respectively. It is stated that all DDs were prepared in name of DSIDC and a total sum of Rs.21,29,070/- was paid to the accused persons through DD. It is stated that after some time Vikram Saxena called the complainant and asked for Rs.2,50,000/- in cash as maintenance charges. It is stated that Vikarm Saxena introduced the complainant to the petitioner herein as the Investigating Officer of DSIDC and took Rs 50,000/- to complete their work on time. It is stated that on 24.10.2019, the complainant paid the entire amount to the accused persons. It is stated that in February 2020, the complainant contacted Vikram Saxena and asked about the allotment letter of the plot, to which Vikram Saxena asked the complainant to bring Rs.50,000/- and get the copy of the allotment letter. It is stated that on 10.02.2020, complainant met Vikram Saxena and gave him Rs. 50,000/-. It is stated that Vikram Saxena told the complainant that the allotment letter would be delivered to his home through Post. It is stated that when they

didn't get the allotment letter, the complainant along with his son went to the office of DSIDC on 04.06.2020 and enquired about the matter with the officials of the DSIDC. It is stated that the officials of DSIDC told the complainant that there was no scheme of Re-allotment in DSIDC and they also told the complainant that no one by the name Vikram Saxena was working in the office. It is stated that thereafter the complainant tried to contact Vikram Saxena telephonically, but his number was switched off. On this complaint FIR No.46/2020 dated 20.07.2020, registered at Police Station Connaught Place for offences under Sections 420/468/471/120B IPC.

4. Investigation is complete and charge-sheet has been filed for offences under Sections 419/420/467/468/471/120B IPC. A reading of the charge-sheet reveals that the accused came to DSIDC and had advertised for allotment of plots and many persons who had applied could not get the plots. DSIDC is now known as DSIIDC. The modus operandi was that Vikram Saxena had procured a list of persons who had not been allotted plots which were advertised in the year 1990 and he would contact all those persons assuring them that plots would be allotted to them and introduced them to Ajay Saxena. He opened an account in the name of DSIDC (Deva Sewa Income Development Company). The investors were told that the Government had allotted 10,000 new plots to those who were denied the plots earlier. It is stated that Vikram Saxena would contact these persons and had introduced the petitioner herein as a Senior in order to assure the gullible investors that the Government was planning to allot the plots to such persons who had been denied the plots on an earlier occasion. The Charge-sheet also reveals that more than Rs.7 Lakhs had been transferred by Vikram

Saxena to the account of the petitioner herein.

5. The petitioner approached the Sessions Court by filing an application for bail in FIR No.45/2020. The learned Additional Session Judge *vide* order dated 23.11.2020 dismissed the said application. The petitioner approached the Trial Court by filing an application for bail in FIR No.46/2020. The learned Metropolitan Magistrate *vide* order dated 09.03.2021 dismissed the application. The petitioner has, therefore, filed the instant petition seeking regular bail.

6. Mr. Mohit Mathur, learned Senior Counsel appearing for the petitioner, contends that the petitioner is an Advocate and is practising in Shaharanpur. He submits that the petitioner happens to be a brother-in-law of Vikram Saxena and he has been falsely implicated in the present case. It is contended by the learned Senior Counsel that the allegation against the petitioner is that he masqueraded himself as Mudit Kumar and was, therefore, part of the conspiracy to lure the people who had not been allotted industrial plots by DSIDC. He further states that in FIR No.45/2020, the petitioner is shown as Kapil @ Mudit whereas in FIR No.46/2020, the petitioner is shown as Mudit Kumar. He further states that there is no formal TIP and the petitioner has not been identified. The learned Counsel for the petitioner also contends that there is a similar FIR being FIR No.193/2020 dated 12.11.2020, registered at Police Station Economic Offences Wing for offences under Sections 406/419/420/468/471/120B IPC in which one Nikhil Arora, who is a CA, has transferred Rs.2.39 Crores into his bank account from the account of DSIDC (Dev Sewa Income Development Company), has been granted bail. He further contends that in FIR No.64/2019, accused Vikram Saxena was arrested on the disclosure

statement of Kapil Marwah but Kapil Marwah had not been arrested in any other case. He, therefore, submits that the Police is adopting the principle of pick and choose. The learned Counsel for the petitioner further contends that the petitioner is the brother-in-law of the main accused and certain transactions had been made and money had come to the joint account of the petitioner and his wife, and just because money had been transferred, it did not mean that the petitioner had been part of the alleged offence. He further submits that the petitioner's wife is suffering from piles. The learned Senior Counsel appearing for the petitioner submits that charge-sheet has been filed and the petitioner is in custody for more than one year and, therefore, bail be granted to the petitioner. The learned Senior Counsel appearing for the petitioner submits that the petitioner will abide by any condition imposed by the Court.

7. *Per Contra*, Ms. Meenakshi Chauhan, learned APP for the State, contends that the petitioner is a part of a conspiracy. She states that the petitioner has masqueraded as a senior of Vikram Saxena in order to trap gullible investors and a huge amount of money had been taken from various investors. She contends that apart from present FIRs, the petitioner has also been arrested in FIR No.193/2020. Ms. Chauhan, learned APP for the State, has taken this Court through various cash deposits made to the account of the petitioner and has informed the Court that in FIR No.45/2020, more than Rs.5 Lakhs had been deposited to the account No.159837000437, IndusInd Bank. She further contends that more than Rs.8 lakhs have been transferred by the petitioner in various accounts. She further states that for an offence under Section 467 IPC, the petitioner can be imprisoned for life. She states that the petitioner is a part of a large-scale conspiracy cheating large number

of people of their hard-earned money. She states that the petitioner has been identified in the Police Station by the complainant. She states that the petitioner was also arrested in FIR No.193/2020. She contends that Ajay Saxena, who is the brother of Vikram Saxena has been declared as Proclaimed Offender. She contends that if the petitioner is enlarged on bail, it would be impossible to recover the money and, therefore, bail ought not be granted to the petitioner.

8. Detailed Status Reports have been filed by the State showing the amounts received by the petitioner, the amounts deposited in the account of the petitioner and his wife, the amount transferred from the account of the petitioner and his wife to the account of the petitioner and his father. The Status Reports also give the details of the online transfers from the account of Vikram Saxena to the account of the petitioner and his wife and the account of petitioner and his father in both the FIRs. The Status Report further reveals that Vikram Saxena and the petitioner herein are involved in cheating various people. The Status Report also reveals that even the family members of Vikarm Saxena and the petitioner herein are involved in the crime, including their wives, for which purpose joint accounts have been opened. The Status Report also indicates that the wife of Vikram Saxena namely, Prachi Saxena, has been charge-sheeted for an offence punishable under Sections 420/120B IPC in FIR No.44/2020 dated 18.07.2020 registered at Police Station Connaught Place. It is also stated that the elder *Jija*/brother-in-law of Vikram Saxena, namely Kapil Marwha, has been charge-sheeted in FIR No.193/2020 under Sections 419/420/468/471/120B, registered at Police Station Economic Offence Wing, Delhi. The Status Report further reveals that money of the victims is yet to be recovered.

9. Heard Mr. Mohit Mathur, learned Senior Counsel appearing for the petitioner and Ms. Meenakshi Chauhan, learned APP for the State, and perused the material on record.

10. The role assigned to the petitioner is that he masqueraded as an officer and Senior of Vikram Saxena and thereby took the investors into confidence to part with their hard earned money. The petitioner is accused of offences punishable under Sections 419/420/467/468/471/120B IPC. The petitioner has been identified in the Police Station by the complainant. Other than Section 467 IPC, all other offences have maximum punishment for seven years and the petitioner has already spent one year and two months in custody. The question as to whether the petitioner can be convicted for offences under Section 467 IPC with the aid of Section 120B is a matter of trial. The charge-sheet has been filed. The evidence are primarily documentary in nature. A perusal of the charge-sheet would show that the kingpin in the entire case is Vikram Saxena. Vikram Saxena has been granted interim bail for a period of four months by this Court vide order dated 29.09.2021 in BAIL APPLN.1729/2021, where it has been noted that about 21 complaints have been filed against Vikram Saxena that have been received by the EOW, apart from four FIRs being FIR Nos. 44/2020, 45/2020, 46/2020 and 47/2020 registered at Police Station Connaught Place. The fact that money is yet to be recovered can also not be a reason to keep the petitioner in further incarceration.

11. In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the Supreme Court laid down the parameters for granting or refusing the grant of bail which are as under:

“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 accusation;
iii. severity of the punishment in the event of conviction;
iv. Danger of the accused absconding or fleeing, if released on bail;
v. character, behavior, means, position and standing of the accused;
vi. Likelihood of the offence being repeated;
vii. Reasonable apprehension of the witnesses being influenced; and
viii. Danger, of course, of justice being thwarted by grant of bail.”

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

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

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in

the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

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

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

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the

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

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

(emphasis supplied)

13. A perusal of the complaint shows that allegedly Vikram Saxena is the kingpin in the entire episode and he has been granted interim bail by this Court in BAIL APPLN. 1729/2021 on 29.09.2021 for a period of four months from the date of his release subject to his depositing Rs.50,00,000/- with this Court and furnishing a personal bond of Rs.5,00,000/- with one

surety in the like amount to the satisfaction of the learned Trial Court/Duty MM.

14. Investigation is complete. Charge sheet stands filed and the presence of the accused is not necessary for investigation in this case. The petitioner is an Advocate and has roots in the Society. As stated above, barring the offence under Section 467 IPC where the maximum sentence can be life imprisonment, all other offences attract a maximum punishment of seven years or less. As stated earlier, the fact as to whether the petitioner can be convicted for an offence under Section 467 IPC with the aid of Section 120B IPC will be decided only at the time of trial, after evidence is lead. The evidence is primarily documentary in nature and are in the custody of the prosecution. This Court is of the opinion that in the facts and circumstances of the case, the petitioner is not in a position to exert pressure or influence the witnesses, and conditions can be stipulated to ensure that the petitioner does not flee from justice.

15. Charges are yet to be framed and the trial will take a long time. This Court is inclined to grant bail to the petitioner FIR No.45/2020 dated 19.07.2020, registered at Police Station Connaught Place for offences under Sections 420/468/471/120B IPC and FIR No.46/2020 dated 20.07.2020, registered at Police Station Connaught Place for offences under Sections 420/468/471/120B IPC, subject to the following terms and conditions:

- a) The Petitioner shall furnish a personal bond in the sum of ₹5,00,000/- with two sureties of the like amount, one of them should be a relative of the petitioner, to the satisfaction of the Trial Court/Duty Magistrate.

- b) Though the petitioner is a resident of Shaharanpur but till charges are framed or till charge-sheet in FIR No. 193/2020 dated 12.11.2020 is not filed, the petitioner will reside in Delhi. The Trial Court is directed to verify the address of the petitioner where he will reside in Delhi, at the time of accepting surety.
- c) The Petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- d) The Petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses.
- e) Violation of any of these conditions will result in the cancellation of the bail given to the Petitioner.

12. It is made clear that the observations made in this Order are only for the purpose of grant of bail and cannot be taken into consideration during the trial.

13. Accordingly, the bail applications are disposed of along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 21, 2021

Rahul