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

% Delivered on : 22nd October, 2021

\+ **<u>BAIL APPLN. 2100/2021</u>**

AUNIRBAN SAHA ..... Petitioner

Through : Mr.Mukul Gupta and Mr.Mohit Mathur Senior Advocates with Mr.Neeraj Chaudhari, Mr.Akshay Chandra and Mr.Ravjyot Singh, Mr.Sumit Kr. Mishra, Mr.Harsh Gautam, Advocates.

versus

STATE ..... Respondent

Through : Mr.Kamal Kr. Ghai, APP for State. Mr.Siddharth Aggarwal, Senior Advocate with Mr.Raghavendra Mohan Bajaj, Mr.Agnish Aditya, Ms.Rudrali Patil, Ms.Arshiya Ghose, Advocates for complainants-Ashish Dhawan and Kumar Sambhav Sultania. Mr.Vikram Singh Jakhar, Mr.Akash Jha, Advocates for complainant-Ms.Mamta Bahl.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

<u>YOGESH KHANNA</u>, J.

1. This petition is filed under Section 439 Criminal Procedure Code (hereinafter referred as *Cr P C*) for regular bail to petitioner in case FIR No.*103/2019* registered under Section *420/406/120B* IPC at police station Economic Offence Wing.

2. This order be read in continuation of earlier order dated 27.09.2021. The learned senior counsel for the petitioner argued an inquiry was initiated on a complaint dated 05.02.2019 against the petitioner. On

11.06.2019 the present FIR was registered. On 09.12.2020 the petitioner was arrested and is in judicial custody since 12.12.2020. The charge sheet was filed on 03.02.2021; cognizance taken on 06.02.2021; the IRP has since been appointed and even NCLT Court constituted the Committee of Creditors; and bids are being invited to take up construction of the flats.

3. The learned senior counsel for the petitioner urged since January 2021 the investigation is complete and no useful purpose would be served by keeping the petitioner in custody. The extent of construction done by the petitioner, as mentioned in the chargesheet, is as under:-

> *The project 'Amadeus' comprises three (3) Towers of 35 floors each with total 330 high-end flats/apartments. The substantial portion of construction has been done on the aforesaid project and the physical progress of the construction till date is as follows:-*
> *a) Tower A - Structure completed up to 21 floors with 14 floors remaining*
> *b) Tower B - Structure completed up to 19 floors with 16 floors remaining*
> *c) Tower C - Structure completed upto 24 floors with 11 floors remaining*
> *Out of total 330 flats only 266 flats have been booked/ sold to various buyers so far.*

4. The photographs are annexed.

5. It is argued the petitioner company had taken loan from two companies of USA for construction and amounts were repaid to those companies, which the prosecution alleges to have been siphoned off. It is alleged there is no allegation of tampering with evidence.

6. The State filed its status report stating interalia the petitioner herein was a director of the company and an authorised signatory of its bank accounts wherein the amounts received from the investors were deposited.

Many more complaints have been received with same allegations against the petitioner and his company and it is alleged all accused persons used the funds of complainant and other investors to develop their personal Real Estate Projects, other than the one offered. It is alleged by adopting this modus operandi, the petitioner siphoned off the funds of complainants in his other companies.

7. The petitioner is involved in five cases of NI Act and three other FIRs of similar nature are still pending investigation. The petitioner alongwith his accomplices had duped numerous home buyers and had divested them off their life time savings and it is alleged there is every possibility in case he is admitted to bail, he may tamper with the evidence and may influence the witnesses and even abscond to avoid legal proceedings.

8. It is alleged there are false averments made in the bail application to the effect there is only one complainant in the FIR; rather it is a multi-victim FIR and though the complainant is projected to be a speculative investor alleging due to fall in the real estate market the petitioner had suffered losses, but the case is otherwise. It is alleged the petitioner even took time to settle the matter with complainant(s), but then did not come forward.

9. Heard.

10. The allegations are petitioner was taking active role in the development of the project and have been signing allotment letters for and on behalf of the accused company. Further he did not cooperate with the

police nor provided requisite documents and rather changed the registered office of the company. The petitioner was arrested on 09.12.2020 after issuance of NBWs. A press statement dated 11.02.2020 was issued by the Delhi Police on its official website stating *interalia* sincere efforts were made to arrest the accused person, but all were absconding and all their possible hide outs were checked, but no clues were found. The allegations are apprehending his arrest the petitioner too had shifted his residence at various locations and ultimately was arrested from a hotel at Faridabad, Haryana. Even one of the co-accused A.K. Sirohi, a joint managing director was granted interim bail to perform last rites of his mother, but did not surrender, rather is declared a *proclaimed offender*. The allegations are the accused company has been giving undertakings to various Courts from time to time to settle or pay the amount to victims, but all such undertakings have been violated and if the petitioner is granted bail, the possibility of his again absconding from justice, as shown by his previous conduct, cannot be ruled out.

11. A chart presented by petitioner before this Court is though to the effect he has spent more than the amount received from customers appear to be misleading as he seem to have suppressed the fact the company had taken loans from various financial institutions for the project to an appropriate extent of Rs.271 Crores which makes its total liability as Rs.560 Crores approx; and hence even if it is admitted they have allegedly spend Rs.421 Crores, much of the amount has been siphoned off to different entities having no concern with the projects.

12. In *Sunil Dahiya v. State (Govt. of NCT of Delhi)* Bail Applications No.1212/2016, 1221/2016 and 1222/2016 decided on 18.10.2016 this Court *interalia* observed:-

> *54. The nature and gravity of accusations against the accused, in my view, is serious. The grant of regular bail in a case involving cheating, criminal breach of trust by an agent, of such a large magnitude of money, affecting a very large number of people would also have an adverse impact not only in the progress of the case, but also on the trust of the criminal justice system that people repose. It would certainly not be safe for the society. In case the applicant accused is granted regular bail, it is also likely that he may tamper with the evidence/witnesses, or even threaten them considering that the stake for the accused is high. It is also very much likely that looking to the high stakes, the nature and extent of his involvement, and his resources, he may flee from justice.*

13. The allegations are also the petitioner had tried to collude with initial IPR of *M/s.Shah Infratech Private Limited* and the NCLT per its order dated 05.04.2021 had noted of such collusion between accused person and IPR.

14. The present FIR since pertain to multi-victims, wherein the petitioner has allegedly duped of the investors of Rs.*120* Crores, thus defrauded large number of home buyers; coupled with his conduct of having failed to cooperate during investigation, cannot be released on bail at this stage.

15. The petition is dismissed. Pending application, if any, also stands disposed of.

YOGESH KHANNA, J.

OCTOBER 22, 2021
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