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

*Pronounced on: 03.01.2024*

\+ **BAIL APPLN. 2247/2021**

ANIL KUMAR SHARMA ..... Petitioner

Through: Mr. Pramod Kumar Dubey, Sr. Adv. with Mr. Manoj Singh, Mr. Amit Sinha, Mr. Akshat Sharma, Mr. Kaustabh Chauhan and Mr. Aditya Raaj, Advs.

versus

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

Through: Mr. Aashneet Singh, APP for State.

**CORAM:**
**HON'BLE MR. JUSTICE VIKAS MAHAJAN**

## JUDGMENT

**VIKAS MAHAJAN, J.**

1. The present petition has been filed under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 seeking regular bail in connection with FIR No 309/2018 under Sections 406/420/120B IPC registered at PS EOW.

2. *Vide* order dated 05.07.2021, notice was issued in the bail petition of the petitioner and the State was directed to file a Status Report. The State has filed status report, which forms part of the record.

3. The case of the prosecution as borne out from the status report is that the present FIR was initially registered at PS Anand Vihar on the complaint filed by the Mr. Miza Adil Jahangir (hereinafter referred to as the complainant). The complainant levelled allegations against M/s. Amrapali

Smart City Developers Pvt. Limited (hereinafter referred to as the accused-company) and its directors namely, Anil Kumar Sharma (the present petitioner), Shiv Priya, Ajay Kumar and others. Thereafter, the investigation of the present case was transferred to PS EOW.

4. The complainant alleged that he was approached by the officers/employees of the accused company with a proposal that the accused company provides its customers with the highest level of quality of construction services, that too at fair and competitive market prices. Based on the assurances by the representatives of the accused company, the complainant was induced to purchase a unit in the project "Amrapali Golf Homes" developed in the name of "Amrapali Kingswood". Accordingly, Unit No. D4-0302, Plot No. GH-02, Sec-04, Greater Noida, District-Gautam Budh Nagar (U.P) was jointly booked by the complainant and his wife, and Builder Buyer Agreement (BBA) was signed and issued on 07.11.2013. The complainant made payments of Rs. 17,47,169/- to the accused company towards the total cost of unit/flat of Rs. 35,68,000/-.

5. The above consideration was paid on the assurance that the flats in question would be ready for possession in 2014 as the foundation stone was laid in 2010 but the flat was never offered to the complainant and his wife. The investigation revealed that prior to the registration of the FIR when the complainant had approached the Ld. CMM Court under Section 156(3) Cr.P.C., the matter was settled between the parties and a memorandum of understanding dated 08.04.2017 was executed whereby the accused company agreed to give post dated cheques amounting to Rs. 13,90,300/- and take over all the original documents. The cheques were given by the accused company but later on the cheques were dishonoured.

6. On the aforesaid allegations, the present FIR came to be registered and the petitioner was formally arrested in the present case on 03.11.2020 as he was in custody since 28.08.2019 in another matter.

7. It is the further case of the prosecution that during investigation, it was learnt that the accused company without getting necessary sanctions of the building plan and lay out plan (according to which the project was to be developed), not only advertised about the project but also took booking of the project and dishonestly induced innocent buyers and misappropriated the money. Further, the Accused has changed the layout of the Project to suit his convenience and greediness to make more money. The accused by removing facilities that were offered earlier to the Complainants, sold out and leased out portions of the land within the Project land, to outsiders.

8. Mr. Pramod Kumar Dubey, learned senior counsel appearing on behalf of the petitioner at the outset submits that the petitioner has not violated the terms of the interim bail which was been granted to the petitioner. Further, it is pleaded in the bail petition that the petitioner was arrested in 17 (seventeen) cases by the EOW and out of the said 17 cases, the petitioner has been admitted on regular bail in 04 (four) cases on similar facts and allegations. The complete details of the cases, where the petitioner has been enlarged on regular bail/interim bail have been placed at Pg. 27 of the paper-book.

9. He submits that the petitioner is accused of offences under Section 406/420 IPC and the maximum punishment which can be imposed upon the petitioner is seven years, whereas, in terms of the Nominal Roll, until 27.07.2023, the petitioner has spent about 02 years and 16 days in custody.

10. On the merits of the case, Mr. Dubey submits that the complainant booked a flat with the accused company but later on wished to get his allotment cancelled and accordingly, a memorandum of understanding dated 08.04.2017 was executed between the parties, whereunder the accused company agreed to pay a sum of Rs. 13,90,300/- for which purpose 31 post dated cheques were issued by the company. In furtherance to the aforesaid, it is submitted that the accused company continued to make payment on account till August-September, 2017 but thereafter, due to financial crunch being faced by the company, as well as the fact that the order of moratorium was passed by the learned NCLT on 04.10.2017, the company was unable to honour its commitment in terms of the memorandum of understanding.

11. He submits that failure on the part of the company to honor its commitment towards the complainant is due to reasons beyond the control of the company. He, therefore, contends that there has been no willful default on the part of the petitioner in repaying its investors and the present case is that of corporate failure and not of fraud.

12. He submits that due to the financial failure of the company, the NCLT, Principal Bench, New Delhi, upon a petition filed by the Bank of Baroda under Section 7 of the Insolvency and Bankruptcy Code, 2016, imposed a moratorium and accordingly, an IRP came to be appointed who took over the management and control of the accused company.

13. He submits that the accused company has returned a substantial amount of money against the total settlement amount of Rs. 13 lacs, through banking channels. He further submits that the necessary ingredients of Section 420 IPC are not made out, in as much as, the allegations and the instances of intentional deception or misrepresentation on part of the

petitioner, have not been spelled out either in the FIR or in the charge-sheet filed by the prosecution.

14. He submits that the charge-sheet in the present case has been filed and investigation is complete, therefore, no useful purpose would be served in keeping the petitioner behind bars. He further submits that the charge-sheet was filed on 09.03.2021 and the conclusion of trial is likely to take a long time.

15. Lastly, Mr. Dubey submits that the petitioner has deep roots in the society and there is no likelihood of him fleeing the administration of justice.

16. In the backdrop of the aforesaid facts and circumstances, it has been urged by Mr. Dubey that the petitioner be enlarged on bail.

17. *Per contra*, the learned APP appearing on behalf of the State has argued on the lines of the status report. He submits that the present petitioner has been accused of a grave and serious offence, therefore he may not be enlarged on bail.

18. The learned APP submits that the petitioner is a promoter director of the accused company and was actively involved in the day to day affairs of the accused company. He contends that the intention of the petitioner was dishonest since the very inception as the accused company had collected money from prospective homebuyers even before the building plans were sanctioned by the competent authority.

19. It was contended by the learned APP that the process of resolution under the supervision of the Court appointed Receiver which has been initiated by the Hon'ble Supreme Court cannot inure to the benefit of the petitioner as the same was done to bring respite to the homebuyers but the

same does not wipe out the criminality on part of the petitioner and other co-accused.

20. The learned APP submits that the petitioner is the authorized signatory in the bank accounts of accused company. He further submits that the petitioner is accused of cheating several other persons by adopting the same *modus operandi* in respect of which different FIRs have been registered.

21. I have heard the learned senior counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

22. The gravamen of allegations against the present petitioner is that he being the promoter director of accused company, namely, M/s. Amrapali Smart City Developers Pvt. Limited, has accepted money from the complainant against booking of a flat, however, the possession of the flat was delayed well past the date committed. Thereafter, the complainant entered into a settlement, wherein post dated cheques amounting to approx Rs.13 lacs were given by the petitioner. According to the petitioner, an amount of Rs.9.75 lacs was returned but order dated 25.04.2023 of this Court records that the petitioner returned an amount of Rs.7 lacs to the complainant.

23. Be that as it may, the defence of the petitioner cannot be considered but this Court cannot be unmindful of the fact the accused company became financially non-viable making it impossible for the accused company to honour its commitment especially in view of the fact that CIRP has been initiated against the accused company.

24. At this stage, though no finding on the respective stands of the parties could be given, but at the same time, this Court cannot be oblivious of the

fact that offence invoked against the petitioner is under Sections 406 and 420 IPC for which maximum punishment, if found guilty, is imprisonment for a term which may extend to seven years. However, the petitioner is in custody since 03.11.2020 and the nominal roll dated 28.07.2023 shows that the petitioner has spent 2 years and 16 days in custody, which means as on date, the petitioner has spent more than 2 years and 5 months in custody.

25. It is also not in dispute that though the charge-sheet in the present case was filed on 09.03.2021, but till date the charges have not been framed by the Trial Court, which means the conclusion of trial is nowhere in sight. Therefore, the petitioner cannot be kept in custody for indefinite period to await the outcome of trial.

26. It is to be borne in mind that at the pre-conviction stage, there is a presumption of innocence. The purpose of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be awarded to him. Detention is not supposed to be punitive or preventive.

27. The stand taken by the petitioner that the amount of the complainant has not been returned completely and only a sum of Rs. 7 lacs has been returned, however, it is trite that a bail application cannot be equated with a civil suit for recovery. Reference in this regard may be had to the decision of the Supreme Court in ***Bimla Tiwari v. State of Bihar***[1],the relevant extract reads thus:

> *"9.* ***We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has***

[1]2023 SCC OnLine 51

***been noticed in the present case carries the peculiarities of its own.***

*10.* ***We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail****. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and* ***the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations****. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment;* ***conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment****.*"

(Emphasis supplied)

28. At this juncture, it is also apposite to refer to the following observations of the Hon'ble Supreme Court made in *Sanjay Chandra v. CBI, (2012) 1 SCC 40:*

*"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 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. 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 India, 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. **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 propose of giving him a taste of imprisonment as a lesson**.*

*xxxx xxxx xxxx*

*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**.*

*xxxx xxxx xxxx*

*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)*

29. In ***Satender Kumar Antil v. State of Maharashtra, (2022) 10 SCC 51***, the Supreme Court in the context of economic offences, deprecated the approach of deciding bail applications, strictly contrary to legal principles. The Supreme Court also emphasized the role of criminal courts as guardian angels of liberty:

> *"93. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense.* ***Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice****.*
>
> *94.* ***Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the criminal courts. Any conscious failure by the criminal courts would constitute an affront to liberty. It is the pious duty of the criminal court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest.****"*

*(Emphasis supplied)*

30. Further, it is a matter of record that the investigation is now complete and the charge-sheet stands filed. The present case is otherwise based on documents and all incriminating documents have already been recovered by

the investigating agency and made part of the charge-sheet. Evidently, the custody of the petitioner is no longer required.

31. It is also not the case of the prosecution in the status report that the petitioner has violated the terms of the interim bail which was granted to him on medical/humanitarian grounds and thus the petitioner cannot be deemed to be a flight risk at this stage.

32. In so far as the apprehension expressed by the learned APP that the petitioner may influence the material witnesses, such apprehension could be allayed by imposing appropriate conditions on the petitioner.

33. Considering the above-discussed circumstances, keeping in perspective the long incarceration of the petitioner and the law laid by the Hon'ble Supreme Court, I am of the view that the petitioner is entitled to grant of bail pending trial. Accordingly, the petitioner is admitted to bail subject to his furnishing a personal bond in the sum of Rs. 50,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/Jail Superintendent, further subject to the following conditions:

a. Petitioner/applicant shall surrender his Passport, if any, before the Trial Court at the time of furnishing bail bond/surety bond.

b. Petitioner/applicant shall appear before the Court as and when the matter is taken up for hearing.

c. Petitioner/applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating officer concerned.

d. Petitioner/applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the present case so as to dissuade them from disclosing such facts to the Court or to any other authority.

34. It is made clear that the observations made hereinabove are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

35. The petition stands disposed of.

36. Order *dasti* under the signatures of the Court Master.

37. Order be uploaded on the website of this Court.

**VIKAS MAHAJAN, J.**

**JANUARY 03, 2024**
**MK**