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

% **Reserved on: 05th December, 2022**
Pronounced on: 16th December, 2022

\+ **BAIL APPLN. 150/2022 and CRL.M.(BAIL) 662/2022;**
\+ **BAIL APPLN. 151/2022 and CRL.M.(BAIL) 661/2022;**
\+ **BAIL APPLN. 152/2022 and CRL.M.(BAIL) 658/2022;**
\+ **BAIL APPLN. 154/2022 and CRL.M.(BAIL) 660/2022;**
\+ **BAIL APPLN. 155/2022 and CRL.M.(BAIL) 659/2022;**
\+ **BAIL APPLN. 156/2022 and CRL.M.(BAIL) 670/2022;**
\+ **BAIL APPLN. 157/2022 and CRL.M.(BAIL) 656/2022;**
\+ **BAIL APPLN. 158/2022 and CRL.M.(BAIL) 652/2022;**
\+ **BAIL APPLN. 159/2022 and CRL.M.(BAIL) 669/2022;**

NISHANT MUTTREJA & SUSHANT MUTTREJA
(CURRENTLY IN JUDICIAL CUSTODY) ..... Petitioner(s)

Through: Mr.Pramod Kumar Dubey, Sr. Advocate with Mr.Apoorv Agarwal, Mr.Vaibhav Manu Srivastava, Ms.Divya, Ms.Nikita and Ms.Shikha Khurana, Advocates.

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Ms.Rupali Bandhopadhya, ASC with Mr.Akshay Kumar and Mr.Abhijeet Kumar, Advocates for State with Insp.N.K.Singh, PS EOW.
Mr.Kalyan Dutt, Advocate for complainant.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. Both petitioners are facing trial in various FIRs registered with Economic Offences Wing (EOW) and had filed the present bail application(s). The allegations against the present applicants are as under:

(i) M/s Cosmic Structures Ltd., (Company/Cosmic Group), was not the rightful owner of the lands on which projects were raised.
(ii) The Company was not having necessary permission / NOCs to raise the projects.
(iii) The Company was not having any approval of Noida/Greater Noida Authority for raising the projects.
(iv) Construction of the projects was very slow and the company did not hand over Units to the customers.
(v) The Company did not pay the Assured Return as promised by them.
(vi) The Company siphoned off the booking amount collected by them.

2. It is submitted the applicant has been roped in the FIRs for the sole reason they were discharging their duties in the capacity as directors but now have spent about *five* to *six* years in imprisonment in each FIR. It is stated under Section *420* IPC the imprisonment is extendable upto seven years; under Section *406* IPC the imprisonment is extendable upto three years with fine and for the offences under Section *409* IPC the imprisonment is extendable upto ten years *plus* fine or life.

3. Reference was made to Sections *29(1) and 325* Cr.P.C. to show the manner in which the trial and conviction under Section *409* IPC is done and the punishment if it is to be granted by the learned ACMM exceeding three/seven years.

4. It is the submission of the learned senior counsel for the petitioner the total amount allegedly cheated in the present FIR is approximately Rs.*148.00* crores. Admittedly, out of the said amount, a sum of Rs.*76.00* crores have been invested; Rs.*29.00* crores and Rs.4.50 crores is lying in

subsidiary companies which amount *admittedly* stood frozen by the Investigating Officer and thus only Rs.***38.70*** crores is the alleged cheated amount. It is submitted before the NCLT various efforts are being made by the petitioners to revive the schemes and one such scheme No.*01/2020* was rather filed on 19.08.2019, but objections were filed by interested parties. On 06.04.2022 the Company Court ordered since the ex-directors of the company are in judicial custody it is difficult to accept the ex-management would be in a position to sustain any viable scheme. The accused company also propounded a scheme with *M/s.Good Living Infrastructure Pvt. Ltd. (Bhutani Group)* in October, 2020 vide company appeal no.*631/2020* which proposed to invest an amount of *Rs.300* crores and also proposed an option to the customers to get a unit in Bhutani's project in exchange. The accused company propounded yet another scheme with *M/s.Renowned Buildtech Pvt. Ltd.* vide Company Appeal no.*76/2021* who proposed to invest an amount of *Rs.50.00* crores and collaborate with the company for development of two projects but no order has since been passed.

5. The customer's association also propounded a scheme with M/s.Alpha Corp. in October, 2020 vide C.A.(Main) No.*02/2020* who proposed to invest *Rs.100* crores by taking loan on properties of liquidating companies but such scheme was also dismissed vide order dated 26.04.2022 stating *interalia* the essential rationale of the scheme is to realize the value of the assets of the liquidating company and there was no upfront payment.

6. Various other schemes were also filed by M/s.Cosmic Unit Buyers Association and Cosmic Victims Association but were not accepted. It is

also the case of the petitioners they had given the assured returns to customers till March, *2015*.

7. On the other hand the learned ASC for the State has alleged the applicant/accused being directors were running group of companies with a sole object to cheat the investors. They opened various shell companies to siphon off the funds and were the directors in those companies as well. They have caused material damage to the economy and the trust required in order to ensure other legitimate projects to continue and have not taken suitable and concrete steps to revive the plan; as nothing is visible on ground, the application for bail was opposed. It was argued these are economic offences and **whatever may be the length of their custody**, the accused should not be granted bail in these type of offences.

8. The learned counsel for the complainant also argued there are *6000* investors who had invested their lifetime savings in the residential and commercial projects of the company but were put to loss and hence bail be not granted. He relied upon *State of Bihar vs. Amit Kumar* in CRL.A.*767/2017* which read as under:

> *"9. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such mere fact that he was in jail for however long time should not be the concern of the Courts.*
>
> *15. Further we cannot lose sight of the fact that the investigating agency is **going to file** additional charge sheet. Therefore, the respondent's presence in the custody **may be necessary for further investigation**. Furthermore we cannot approve the order of the High Court, in directing the concerned investigating authority to file the charge sheet within a month, as the case involves almost 32 accused and a complex modus operandi.*
>
> *16. Having bestowed our thoughtful consideration to the gravity of the offence and several other crucial factors which are discussed in detail in preceding paragraphs, we are of the opinion that it is not advisable*

*to release the accused/respondent on **bail at this stage**. Accordingly without expressing any opinion on final merits of the case, we set aside the order of the High Court. The appeal stands allowed."*

9. The learned counsel for the complainant referred to an order dated 06.04.2021 passed in BAIL APPLN.*1133/2019* wherein the application of the accused was dismissed on account they were economic offenders. He also argued the schemes introduced by the petitioners were rejected by the Court in CO.APPL.*76/2021* vide order dated 06.04.2022 as none of the management members could supervise it since all were in jail. Reference was also made to BAIL APPLN.*1212/2016* decided on 18.10.2016 of a builder wherein the applicant were accused of siphoning off around Rs.*600* crores and illegally benefiting from the complainants' money on false pretext of providing lucrative returns. It is argued on 15.12.2021 an order was passed in Cr.Case*6978/2021* by the learned CMM whereby disposing off an application under Section *173(8)* Cr.P.C. for further investigation. It is stated not even a single penny has been handed over to the victims and as such they be not granted bail.

10. Heard.

11. As per the SFIO chargesheet the company had taken booking amount from customers totaling to ***Rs.524.16*** crores and had utilized the funds for construction purposes totaling to Rs.***422.85*** crores after reducing the total expenditure by Rs.*23.45* crores, Rs.*17.34* crores and Rs.*27.96* crores on account of transfer to profit and loss account on percentage completion method, the total expenditure is Rs.***491.60*** crores against receipt of Rs.***524.16*** crores.

12. A small asset worth Rs.***29.00*** crores is stated to be still available in subsidiary companies of CSL which details are given in CSL revival

scheme dated 19.08.2019 submitted in the company Court. The SFIO report contain figures given by a government valuer and it notes total booking amount received was Rs.***547.38*** crores, including revenue recognised as Rs.23.22 crores and thus the net receipt is to Rs.***524.16*** crores.

13. Thus, whatever was received, it is alleged maximum was spent on the construction. The petitioner *are still inclined to co-operate with the investors and time and again are giving various schemes to revive the projects.*

14. The status report dated 27.09.2022, filed by prosecution read as under:

> *"a. to b. xxx*
> *c. The alleged Petitioners/promoters of all the 06 projects of M/S Cosmic group collected approx. Rs.* ***524*** *Crore (Secured Creditors) from 6000 victims and Rs.****6.94*** *Cr. from other sources (Unsecured Creditors). The total amount comes to be approximately Rs.* ***531*** *Crore. Further, expenditure incurred based on the surveyor's report (Government Approved Valuer) attached with the SFIO investigation report comes to be Rs.* ***506.74*** *Crore including Land Cost & Development/Direct Cost, Indirect Expenditure (Assured Return), Commission and Other Indirect Expenditure. Therefore, after deducting the amount of expenditure of Rs 506 74 Crore from the total money collected from victims, there is difference of approx. Rs.* ***40*** *Crore* ***which is still to be traced****. As per the investigation conducted so far by the Economic Offences Wing. New Delhi and as per the investigation conducted by SFIO(Serious Fraud Investigation Office), it is evident that the alleged Petitioners/promoters diverted the funds collected for construction and development of the 06 projects into the 30 associated/sister concerns/companies"*

15. Further, the Status Report dated 31.10.2022 *inter alia* read as under:-

> *During investigation, notice was sent to the directors of the accused company M/s Cosmic Structures Private Limited to provide the relevant documents. They joined the investigation on 28.10.2022 and provided the following documents/information:-*

*1) Valuation report of Mr.B.P.Singh, Govt. Approved Valuer dated 30.07.2019 hired by the accused company and Balance Sheet of the accused company. A joint statement of Mr.Vikas Raj Sharma and Mrs.Ravneet Muttreja wa also received in which they stated that the total amount received was of Rs.**524** Crores while Rs.**795 Crore was still to be collected from the customers**, who had booked units in all the projects of accused company. As per that statement, a total amount of Rs.1319 crore was payable by investors in all, out of which 39.73% (i.e. Rs.524 Crore) had been actually paid to the company of the petitioners.*

16. In *Paresh Nathalal Chauhan vs. State of Gujarat* SLP (CRL.)*9458-59/2021* the Hon'ble Supreme Court held as under:

> *On conspectus of the aforesaid matter, we are of the view that the appellant cannot be indefinitely detained in custody more so having already undergone a period of **25** months of custody when he can be sent behind bars for maximum five years. It is almost **50% of the sentence**. Complaint has been filed.*
>
> *xxxxxxx*
>
> *In view of the aforesaid facts and circumstances, we are inclined to grant bail to the appellant on terms and conditions to the satisfaction of the Trial Court. We have put to learned counsel for the appellant that the appellant must be careful not to indulge in any such activities in the future."*

17. Further in *Satender Kumar Antil vs. Central Bureau of Investigation* SLP (CRL.) *5191/2021*, the Hon'ble Supreme Court held as under:

> *"47. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offense, **he shall be released** by the court on his personal bond with or without sureties. The word 'shall' clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the public prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, xxxxxx*
>
> *48. The aforesaid directions issued by this Court if not complied fully, are expected to be complied with in order to prevent the unnecessary incarceration of undertrials, and to uphold the inviolable principle of presumption of innocence until proven guilty.*

68. 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. This Court in Arnab Manoranjan Goswami v. State of Maharashtra, (2021) 2 SCC 427, has observed that:xxxx

18. Further in *Sunil Shakt vs. State* 2001 SCC OnLine Delhi 571, the Court held as under:

*9. In this case, admittedly, the petition was arrested on 14th March, 1997. He was released on interim bail to enable him to pay to the investors. Having failed to make payment he surrendered. He is in custody for the last about **2-1/2** years. he is a married man having two minor daughters Prosecution is still at the initial stage, it is likely to take quite some time before the prosecution is able to complete its evidence. Only thereafter the Magistrate would be entitled to exercise its discretion under section 325 Cr.PC and not earlier. xxxx*

*10. Although Section 409 IPC is not specifically mentioned in the above noted observations **yet the punishment prescribed under this Section is the same as prescribed u/s 326 IPC,** whereunder the accused can be sentenced to imprisonment for life or imprisonment for term which may extend to **10** years or fine or both."*

19. Further in *Suresh Kalmadi vs. Central Bureau of Investigation* ILR (2012) II Delhi 630, the accused was granted bail when the offence was under Section *467* IPC which punishment is similar to Section *409* IPC.

20. In *Ashish Naithani vs. State of Govt. of NCT of Delhi* (2021) SCC OnLine Delhi 4400, the Court held as under:

*"15. Thus, considering the facts stated above and relying upon Sharad Kumar & Others vs CBI 2011(126) DRJ 525, where bail was granted for an offence under Section 409 IPC, and also considering the accused is in custody since 09.11.2019, for almost **two years** and the investigation being complete, the accused is hereby admitted to bail on his executing a personal bond in the sum of Rs.1.00 Lac with one surety of the like amount to the satisfaction of the learned Trial Court/Duty Magistrate on following conditions:-*

a) he shall not temper with the evidence;

b) he shall not influence the witnesses;
c) he shall not visit abroad except with prior permission of the learned Trial Court; and
d) he shall always keep his mobile location app open and shall inform the Investigating Officer of all the mobile phone/s he is using."

21. *Sunder Singh Bhati vs. State* 2022 SCC OnLine Delhi 134 was a case of multi victim scam of over *900* victims who were cheated of about Rs.*240* crores and the Court held as under:

> *"19. Therefore, the magnitude of the offence cannot be the only criterion for denial of bail. The object of bail is to secure the presence of the accused at the time of trial; this object is, thus, neither punitive nor preventative, and a person who has not been convicted should only be kept in custody if there are reasons to believe that they might flee from justice or tamper with the evidence or threaten the witnesses. If there is no apprehension of interference in administration of justice in a criminal trial by an accused, then the Court should be circumspect while considering depriving the accused of their personal liberty. Mere vague belief that the accused may thwart the investigation cannot be a ground to prolong the incarceration of the accused.*
> *20. Most importantly, while the Petitioner in BAIL APPLN. 3750/2021 was arrested on 09.12.2020, the Petitioner in BAIL APPLN. 3921/2021 was arrested on 22.08.2020. Both the Petitioners* ***have been in custody for over a year now. Chargesheet as well as supplementary chargesheet have been filed, and all the evidence available is documentary in nature*** *and in custody of the investigating agency. Whether or not the cheated money was entrusted to the Petitioners is a matter of trial and cannot be taken into consideration at this juncture. This Court is, therefore, of the opinion that continued custody of the Petitioners is no longer required and that both the Petitioners should be enlarged on bail."*

22. Further in *RE: Policy Strategy for Grant of Bail* in Sou Moto Writ Petition (Crl.) *04/2021* decided on 14.09.2022, the Court held as under:

> *"It is pointed to us that in the letter dated 10.6.2022 referred to aforesaid, the benchmark has been fixed as two third of the completed sentence but then we are of the view that* ***50%*** *completed sentence would sub-serve the purpose and individual States will be taking their own call even qua the category of prisoners to whom the benefit can be given and not necessarily confined to the guidelines annexed to the letter dated 10.6.2022."*

23. Further in *Dilip Singh vs. State of Madhya Pradesh and Another* in CRL.A.*53/2021* decided on 19.01.2021, the Court held as under:

> *"5. It is well settled by a plethora of decisions of this Court that criminal proceedings are **not for realization of disputed dues**. xxxx"*

24. Admittedly, the chargesheet has since been filed; the trial has not yet begin; there are numerous witnesses to be examined and it would take years to examine them; there is no possibility of dropping of evidence; the petitioners are not at *flight risk* as their passports have since been surrendered; they were earlier released on interim bail and did not misuse their liberty and have been in judicial custody for the last more than ***five*** years; the applicability of Section *436A* Cr.P.C.; all evidence being documentary and in custody of Investigating Officer; hence, tempering is ruled out as is already in the sole custody of the State. Further the accused have been giving various schemes, including of *upfront payments,* though not accepted as they being in jail. Further admittedly, the applicants have already been *granted bail in three other FIRs* pending adjudication before the District Court, Gautam Buddha Nagar, Greater Noida, Uttar Pradesh, thus, in view of the law discussed above viz. *Satender Kumar Antil* (supra) *Sunil Shakt* (supra) and others, as also the facts stated above more specifically in paras 11, 12, 13, 24 above; I admit both the accused to bail on their furnishing personal bond of Rs.5.00 lacs each with one surety each of like amount to the satisfaction of the learned Trial Court in each of the FIR. The petitioners are directed to keep their mobile location app open at all time. They shall not leave the country without permission of the learned Trial Court and shall not threaten/coerce/influence the complainants/victims in any manner lest it shall be a ground for cancellation of bail.

25. The petitions stand disposed of along with pending application(s).

26. A copy of this order be communicated to the learned Trial Court/Jail Superintendent for information and compliance.

YOGESH KHANNA, J.

DECEMBER 16, 2022

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