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

\+ BAIL APPLN. 3682/2020 & CRL.M.A. 16235/2020

Order reserved on :01.03.2021
Date of decision : 24.05.2022

SAJJAN SINGH BENIWAL ..... Applicant

Through: Mr. Jasbir Singh Malik, Advocate.

Versus

GOVT OF NCT OF DELHI ..... Respondent

Through: Mr. Kamal Kumar Ghei, APP for State with SI Kamal Kohli, PS EOW.
Mr. Ramesh Gupta, Sr. dvocate with Mr.SunilDalal, Mr.Rajesh Baweja & Mr.SandeepChaudhary, Advocatesfor complainant.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The applicant, vide the present application seeks the grant of anticipatory bail in relation to FIR No. 59/2019, dated 4.4.2019 P.S. Economic Offences Wing, registered under Sections 406/420/120B of the Indian Penal Code, 1860. The applicant submits that he is a senior citizen aged 65 years and a retired government servant with a clean record having served the Irrigation department for 33 years. The applicant further submitted that he is a patient of prostate cancer stage 4(Bone, LN) and has been undergoing the treatment after surgery in 2019 vide patient ID no. 300061505 with the Action Cancer Hospital, New Delhi and had been admitted in the hospital for Chemotherapy on 20.1.2021 and thereafter chemotherapy was to be done on 17.02.2021 as per the written submissions that had been submitted on 8.2.2021.

2. Inter alia the applicant submits that he having joined the investigation and as he is not likely to abscond, custodial interrogation should be avoided in as much as great ignominy, humiliation and disgrace is attached to arrest.

3. The applicant submits that he is a non-executive Director in M/s Prabhu Shanti Real Estate Pvt. Ltd. and that the allegations levelled against this Real Estate Company (hereinafter referred to as '***the company***') are to the effect that it had not delivered flats within the stipulated period of time and some part of the money got transferred into the accounts of its directors. The applicant submits that he has not been the beneficiary of any proceeds and has also not been involved in the day-to-day affairs of ***'the company'.*** Inter alia, the applicant submits that neither the prosecution nor the complainant have produced any documents to show the involvement of the applicant in the day-to-day affairs of the said company. The applicant has further submitted that he is on the Board of Directors only in ***'the company'*** and not in any other subsidiary and/or sister concerns and that he has joined the investigation on 22.08.2019, 5.10.2019 and 12.10.2019 and fully cooperated with Investigating Officer and even after the order dated 24.11.2020 of this Court directing him to join the investigation, the applicant joined the investigation on 7.12.2020 whereafter he has not received any notice for joining the investigation. The applicant has further submitted that he is the brother-in-law of other directors of ***'the company'*** and has clear antecedents with no criminal history.

4. The applicant/petitioner further submits that ***'the company'*** is in insolvency proceedings before the NCLT and that the entire record is in the custody of the Interim Resolution Professional (IRP) appointed by the NCLT vide order dated 13.06.2018.

5. The FIR was lodged on the complaint of the complainant Suman Solanki. It was averred therein that the complainant paid Rs. 59,93,189/- to the builder/real estate company M/s Prabhu Shanti Real Estate Pvt. Ltd.(i.e. ***'the company'***) who had promised in the year 2012 to provide a flat to her within two and a half years but had failed to do so and had rather cheated her and duped her of her hard earned money which those persons were not returning to her with interest nor providing her a flat but had threatened her and other home buyers with dire consequences qua their lives and that of their family members apart from suffering an irreparable loss if they dared to ask for the return of the money or a flat.

6. It has been averred in the FIR that in the year 2008,***'the company'*** announced a residential project "P.D.M. Hi-Tech Homes" consisting of more than 435 flats in more than 6 towers on the land admeasuring 8.976 acres in Sector-3A, Bahadurgarh, District Jhajjar, Haryana and to allure the home buyers, brochures and advertisements were published and big hoardings were put up at various places across Delhi and Bahadurgarh and phone calls also used to be made and

SMSes were also sent to her and other home buyers calling upon them to invest in that property and to purchase a flat in that project. The complainant has stated through the FIR that she had a word with a representative of ***'the company'*** on phone as well and had visited the office of ***'the company'*** at Pitampura where she had met the Directors of ***'the company'*** including Ms.Bhavna Lather and other persons of ***'the company'*** who invited her to visit the project site at Bahadurgarh which she visited and found many home buyers there who were persuaded and allured by Ms.Bhavna Lather (who was the Managing Director as well as the share holder in ***'the company'*** till January-February 2017 as per the record of the Ministry of Corporate Affairs) as well as other directors and the close staff of ***'the company'***. The complainant states through the FIR that she was shown a bunch of sale deeds by these persons claiming that the entire land belonged to them and that there was no lien on the same and that it was represented to her and other home buyers that ***'the company'*** had sufficient funds to complete the entire project single handedly and that ***'the company'*** did not require any loan from anywhere on this project. The complainant submits that she and other home buyers were given a representation that ***'the company'*** was then selling its flats and that they wished that the amounts collected from the home buyers was utilized in completing the project and whatever small amount was required for the completion of the project would be invested by ***'the company'*** from its own sufficient funds. The complainant further submitted through the FIR that she and other home buyers were apprised that the directors of ***'the company'*** belonged to the family of the richest persons of Haryana and were also running several prestigious educational institutions of repute and that thus the directors of ***'the company'*** and other persons involved in ***'the company'*** made her and other home buyers to believe that whatever amount they would be investing in the project to purchase a flat or for the purpose of investment would be solely utilized for the development and completion of the project of ***'the company'***.

7. The complainant submitted that Ms.Bhavna Lather, who has since resigned and other directors also represented that the agreement of the home buyers with ***'the company'*** would be straight away done by and through one of the Directors through a company resolution and not through any other persons outside the Board of Directors which gave her and other home buyers present at the head office a great confidence in ***'the company'***. The complainant further stated through the FIR that she had believed the representation given by them initially at their head office at Delhi, Pitampura, and thereafter at Bahadurgarh and thus, fell prey and parted with the money to book a flat at their Delhi office, which she paid in the year 2012 but that she had not been provided any roof till the registration of the FIR.

8. The complainant further submitted through the FIR that ***'the company'*** later on changed its head office from Pitampura to Rohini and when she and other home buyers inquired about the same, it was informed that the change of address was due to technical reasons. The complainant further submitted that ***'the company'*** had already printed formats containing contents contrary to the assurances and representations given by ***'the company'*** and on being confronted by her and other home buyers, that ***'the company'*** had assured to deal with home buyers directly through one of its Directors through a resolution but ***'the company'*** was dealing through other persons and that the terms of the "Apartment's Buyer Agreement" were different from assurances and representations given by ***'the company'*** qua which the complainant was informed that the format is a routine builder buyer agreement format and that the terms and conditions of the same contrary to the assurances and representations to the buyers may be ignored and also informed that even if the person other than the Directors of ***'the company'*** were dealing with the home buyers, ***'the company'*** nevertheless confirmed its own liability and responsibilities towards the home buyers on which the complainant had signed the Builder-Buyer Agreement.

9. Inter alia, the complainant submitted through the FIR that despite the period of six years the houses were not delivered and ***'the company'*** through its Directors further informed that it was the sole discretion of ***'the company'*** to give a flat or to return the money or to give nothing to the home buyer. The complainant further submitted that after an in-depth inquiry made by her and other home buyers it was learnt that the funds which were collected from her and other home buyers by ***'the company'*** for approximately more than Rs.155 Crores, which amount had been siphoned off by ***'the company'***, its directors individually, jointly, severally to their other projects and to their other accounts and thus ***'the company'*** has committed a criminal breach of trust and that all Directors of ***'the company'***, their staff who dealt with her and other home buyers were responsible jointly, severally and individually for the cheating and criminal breach of trust done and were part and parcel of the conspiracy.

10. As per the FIR, as submitted by the complainant, the applicant Sajjan Singh (i.e. the applicant herein Sajjan Singh Beniwal) as per the records available with the Ministry of Corporate Affairs, was an authorized signatory of ***'the company'***.

11. Notice of the application was issued to the State and the State submitted its status report dated 5.12.2020 under the signature of the ACP, EOW, Mandir Marg for the date of hearing 03.02.2021, which status report was submitted pursuant to directions dated 24.11.2020, 09.12.2020 and 01.02.2021. It was submitted therein to the effect that during the course of investigation, the site of the questioned project i.e. PDM Hi-Tech Homes was visited and only two towers were found at the finishing stage whilst others were far from completion. Through the said status report, the State has put forth the contents of the FIR with it also having been submitted that it had been claimed by ***'the company'*** that they had absolute ownership of the entire land and that the land was free from all kinds of encumbrances and that the accused company had sufficient funds to complete the entire project within the stipulated time without the requirement of any loan.

12. As per the status report during the course of the investigation, it was found that AU Financiers (India) Private Limited had also sanctioned a loan of Rs. 5 Crores in favour of PD Memorial Religious and Educational Association, wherein the accused company i.e. M/s Prabhu Shanti Real Estate Pvt. Ltd., i.e.***'the company'*** in question was the guarantor to the said loan and had mortgaged the project in question, i.e., 'PDM Hi-Tech Home' and subsequently PD Memorial Religious and Educational Association could not repay this loan and insolvency proceedings were initiated against the accused company by the NCLT and an IRP was appointed vide order dated 13.06.2018 and during the course of investigation all the bank accounts of the accused company i.e. M/s Prabhu Shanti Real Estate Pvt. Ltd. i.e. ***'the company'*** and of its Directors were frozen for safeguarding the hard earned money of the homebuyers and in order to prevent the escape of the accused Directors, as per the status report, necessary measures were taken against all accused directors of ***'the company'***.

13. The status report of the State further brings forth that during the investigation, Sh. Abhishek Anand, IRP appointed by the NCLT Court, joined the investigation and provided the forensic audit report of the questioned project wherein the observations had been made to the effect:-

- Advance of Rs. 393 Lacs is outstanding from Bhagwati Tiles against a total purchase of Rs. 259.92 Lacs during June 2016 to June 2018.
- Bogus invoices amounting to Rs. 125.24 Lacs raised during June 2016 to June 2018 from HRKH Builders Pvt. Ltd.
- Accused company used to pay Monthly Directors remuneration to the tune of Rs. 13.90 Lacs per month during FY 2016-17 and Rs. 8.51 Lacs per month during FY 2017-18, though the company reported loss of Rs. 1,91,76,525.81/- in FY 2016-17 and further years.
- Bogus and dubious cash payments of Rs. 169.16 Lacs during June 2016 to June 2018 are there as Labour Charges and Rs.

234 Lacs against purchase of Rodi during June 2016 to June 2018.

- Accused company defaulted to pay off government duty and taxes amounting to Rs. 73.90 Lacs, which are as follows:

  - ✓ PF of Rs. 4,80,652/- was not paid from Oct 2016.
  - ✓ ESIC of Rs. 1,01,729/- was not paid from Oct 2016.
  - ✓ Balance TDS of Rs. 68,08,034/- was not paid since Apr 2017-18.
- The accused company did not maintain a Stock register and resultantly the actual position of stock and raw material regarding inward and outward could not be ascertained.

14. The status report further states to the effect that the accused company had taken a loan of Rs. 25 Crores from M/s India Infoline Housing Finance Ltd. for their project 'PDM Hi-Tech Home' and out of this loan amount, the accused directors had misappropriated Rs. 20.70 Crores with the *malafide* intention to invest in another project of JBG Buildcon and no Tax Compliance (TDS and Service Tax) was made neither by the accused company nor by India Infoline Housing Finance Ltd.

15. The status report further states to the effect that during the course of investigation, home buyers were examined and their statements under Section 161 of the Cr.P.C., 1973 were recorded and as per the ROC records i.e. the records of the Registrar of Companies, it was indicated that the applicant herein i.e. Sajjan Singh Beniwal, the applicant of the present bail application was one of the Directors of M/s Prabhu Shanti Real Estate Pvt. Ltd., i.e. ***'the company'*** since 21.12.2009 and had received a salary of Rs. 6,12,000/- in FY 2013-

2014 from the accused company. It is further stated through the status report that inter related parties transactions were done with Bhagwati Tiles, Bharti Techno Medical Enterprises, AMI Prabhu Developers Pvt. Ltd., PDM Religious and Educational Association, Sangam Infra Estates Pvt. Ltd. and HRHK Builders Pvt. Ltd. without any legal agreement for services rendered by them and that M/s Prabhu Shanti Real Estate Pvt. Ltd., ***'the company'***in question also obtained two separate loans of Rs. 25 Crores each from Tamilnadu Mercantile Bank and M/s Muthoot Fincorp Ltd. for completion of the project 'PDM Hi-Tech Home' and that the applicant herein namely Sajjan Singh Beniwal was also one of the borrowers and guarantors along with other accused directors in these loans which showed his active participation in the day-to-day affairs of ***'the company'***and also showed his role and strength in ***'the company'***.

16. The status report further states to the effect that a notice under Section 41A of the Cr.P.C., 1973 was issued to the present applicant i.e. accused Sajjan Singh Beniwal; that he joined the investigation but remained non-cooperative and did not provide the requisite information for getting the trail of the investments of the complainants/homebuyers and tried to shift the liabilities to other Directors. The State further submitted to the effect that the present case was a multi-victim case, wherein, the complainants had booked flats in the residential project launched by the accused persons and the State opposed the prayer made by the applicant seeking the grant of anticipatory bail submitting to the effect that if he was so granted anticipatory bail, he was likely to influence witnesses.

17. The State through its status report had submitted that one of the accused Bijender Singh Lather had been initially granted protection by the Hon'ble Supreme Court vide order dated 02.11.2020 in SLP (Crl.) Diary No.20863/2020.

18. When the matter was first taken up before this Court on 24.11.2020, the said SLP was pending before the Hon'ble Supreme Court and thus, in view of directions therein dated 02.11.2020 to the effect:-

> ***"Pending further consideration, the petitioner shall not be arrested in connection with FIR No.0059, dated 04.04.2019, registered with P.S. Economic Offences Wing, EOW Delhi for the offences punishable under Sections 406, 420 and 120-B IPC.",***

in view of the proceedings in the said SLP, the matter was re-notified beyond the date before the Hon'ble Supreme Court which was then fixed for 27.11.2020 and vide order dated 24.11.2020, the matter had been directed to be re-notified with directions that the applicant be not arrested subject to conditions imposed vide order dated 24.11.2020 to the effect:-

> ***"…That the applicant shall not leave the area of the NCR; shall join the investigation as and when required by the Investigating Agency, shall keep his mobile phone on at all times; shall drop a PIN on the google map to ensure that his location is available to the Investigating Officer, shall commit no offence whatsoever during the interregnum.***

> ***Furthermore, it is directed specifically that the applicant shall not in any event leave the country and intimation to this effect be sent to the FRRO, Delhi. The copy of the passport of the applicant be placed on the record by the applicant during the course of the day with an advance copy thereof being supplied to the Investigating Agency."***

19. Vide order dated 13.1.2021 in the petition for Special Leave to Appeal (Criminal) 5425/2020, the said SLP (Crl.) against order dated 6.12.2019 in Bail Appln. No. 3023/2019 in the case of Bijender Singh Lather was dismissed.

20. Through the reply of the complainants (apparently the home buyers) dated 1.12.2020 to the application under consideration it was stated that the complainant had lodged the complaint dated 12.9.2018 to the SHO Police Station K.N.Katju Marg, Sector-16, Rohini against the accused persons including the present applicant and that Sh.Ved Prakash Arora also made a complaint on 12.9.2018 and a joint complaint was made by many of the home buyers on 16.9.2018 and many individual complaints were made on different days, that the SHO forwarded all the complaints to the EOW, that the EOW failed to register the FIR for some time and thus a W.P.(Crl.) 349/2019 was filed and once this Court called for a status report the EOW registered the FIR on 4.4.2019 with the Joint Commissioner, EOW and as per this joint complaint there are 55 complainants apart from the complainant Suman Solanki and Mr.Ved Prakash as per Annexure A attached to the reply submitted on behalf of the complainants. The complainant submits that this is not a mere case of accused persons or a builder company taking more than the required time to finish the project whilst leaving home buyers to suffer a financial loss but it is a case where the accused in collusion with banks, associate companies, auditors and chartered accountants have intentionally and in a planned and structured manner committed a number of cheatings, forgery and malpractices, even bookings without licence, charging monies under the construction linked plan even before the committed construction stage was reached, embezzlement of funds, fraud, cheating, breach of trust etc.

21. The complainants further submit that their pain and distress is further aggravated by the huge EMIs that they have to pay towards the money that they have availed as loan for the housing project.

22. The complainants further submit that the case filed before the NCLT vide IB/477/PB/2018 was stage managed between the lender and the accused persons and that it was P.D.M. Religious and Education Association (Society) which availed a loan of Rs.5 Crores on 9.9.2014 whereas the builder/accused was a co-borrower from A.U. Small Finance Bank Limited at a higher interest rate of 16% and this loan was somehow shifted in the name of ***'the company'*** and this lender filed proceedings against ***'the company'*** before the NCLT and the accused company was trying to take credit of settling the dues to the lenders and pursuant to the proceedings to the said proceedings in last week of June, 2018, the IRP Mr. Abhishek Anand has sent an e- mail to all credible creditors including the home buyers to submit their proof of claims as mandatory under the provisions of the Insolvency & Bankruptcy Code, 2016, and the complainants were then shocked to know of the fraud and criminal breach of trust done by the accused persons.

23. The complainants further submitted that out of 430 flats of the builder/accused, 50 flats were allotted to P.D.M Religious & Education Association, a religious society of the accused/builder at a much lower price as compared to what was charged from the home buyers and the allotment was made at the basic sale price of Rs.2120/- per sq. ft as compared to the basic sale price of Rs.3100/-per sq. ft. that was offered to the home buyers. It was also stated through the reply of the complainant that an amount of Rs. 21,49,01,326/- was pending from P.D.M Religious & Education Association which is approximately 80% of the total sale consideration of Rs. 26,97,40,426/- and that the accused builder in its reply to this finding of the IRP incongruously released P.D.M Religious & Education Association of its liability by stating that the left over payments would be made on the delivery of flats, knowing that the flats were nowhere near to be offered for possession.

24. *Inter alia*, the complainant submits that the accused builder held a Board Meeting on 28.7.2014 by way of which it passed a resolution to sell part of the unused land to Mr. Joginder Singh Lather (one of the co-accused as per the FIR) and the description of land and selling price was left blank. The said Joginder Singh Lather, a Managing Director of '***the company***' i.e. the M.D., withdrew Rs. 10080000/-as salary for the year 2013-14 as per the disclosure of the chartered accountant of the accused company and large amounts were paid by accused Joginder Singh Lather to his mother and daughter from ***'the***

company' and that the applicant herein was a signatory to the resolutions passed by ***'the company'*** and was allegedly involved in the cheating.

25. The complainant submitted that the applicant had withdrawn more than Rs.6,00,000/- regularly as so called salary for almost 10 years and regularly signed resolutions authorizing acts and deeds of usurping funds of ***'the company'*** by all its Directors and that he is the brother-in-law of one of the co-accused Joginder Singh Lather.

26. The complainants submit that apart from receiving Rs.6,00,000/- per annum as salary as stated in the bail application, there are several other benefits received by the applicant not deserved by him and the transfer of Rs.6,00,000/- per annum as salary to the applicant as a sleeping director is a questionable transfer in as much as he signed many resolutions of ***'the company'*** and was fully involved in usurping and siphoning of the funds received from the complainants and that he was involved in obtaining loans from banks and financial institutions.

27. Through the written synopsis dated 9.2.2021 the complainants reiterated the contents of their detailed reply dated 1.12.2020 adverted to hereinabove and submitted that whereas there are joint complaints of 55 home buyers there are 110 complainants and that only one FIR registered by the EOW cannot be an encyclopedia of all facts and proofs.

28. Vide order dated 5.2.2021 in view of submissions made on behalf of either side at length it was considered appropriate that a brief synopsis was filed by the applicant, the State as well as the complainant. Furthermore, in view of the submissions that were made on behalf of the applicant to the effect that he was suffering from prostate cancer and was at Stage 4 thereof and was undergoing chemotherapy sessions, the documents in relation thereto sought to be filed by the applicant were directed to be placed on record within a period of three days with a copy thereof being supplied to the State which the State was directed to verify, pursuant to which the written synopsis of the applicant, the State and the verification report qua the ailment of the applicant were submitted.

29. As per the written synopsis dated 1.3.2021 submitted by the State, the medical documents of the applicant have been verified from the Action Cancer Hospital, Paschim Vihar, which indicate that the applicant had been diagnosed with prostate cancer (Stage-4) in March, 2019 and had been treated with chemotherapy and targeted therapy and had been admitted on 20.1.2021 for targeted therapy.

30. Inter alia, it was reiterated through the written submissions that the applicant herein after he joined the investigation remained non-cooperative, did not provide any specific information to help the investigation to get the trail of investments of the complainant/home buyers and tried to shift liabilities to other directors with it having been submitted that initially there was also a process under Section 82 of the of the Cr.P.C., 1973 that had been issued against the applicant and other accused persons named Joginder Singh Lather and Ram Niwas Lather which had been published in the newspapers.

31. The complainants submit that the master data and auditor's report of related companies clearly show that shell companies with related Directors are at the same address; that all Directors are related to each other, and *inter se* transactions of huge cash between the Directors is difficult to ascertain without their custodial interrogation. The complainants also submit that in loan agreements with Tamil Nadu Mercantile Bank and M/s Muthoot Fincorp Ltd. for Rs.25 Crores each, the certified resolutions were signed by the applicant herein as borrower and guarantor and a sum of Rs.5202500/- was paid as professional fees for arranging such loans.

32. The complainants submit that the accused persons involved in this case had collectively cheated groups of home buyers of middle and lower middle class by taking away their hard earned savings of approximately Rs.150 Crores and apart from the same Rs.85 Crores from Banks and had committed the cheating, forgery and criminal breach of trust in a planned and structured manner and that the Investigating Agency needs to unearth the hidden bank accounts/ hide outs of cash of accused persons to unearth the total usurped funds, the inventory records of material and goods, the stock register and details of employees, transfer of funds, detail of actual construction of material used, the details of other companies with the accused persons have any relations, originals of forged bills. The complainants further submit that the applicant herein being on the Board of Directors and co-conspirator was fully aware of all the criminality and trails of the usurped money. *Inter alia,* the complainants submit that the applicant has already recovered from his disease and had undergone a bilateral orchidectomy on 01.04.2019 and his chemotherapy was only to eliminate any residues for which he has taken a booster dose.

33. Documents that have been placed on record by the complainants on 25.02.2021 are copies of annual returns of the year 2015-16 and 2016-17 of the M/s Prabhu Shanti Real Estate Pvt. Ltd., ***'the company'*** in question and the said documents show the incorporation of ***'the company'*** on the date 05.07.2004 and do not *prima facie* support the contention of the applicant being a non-executive director of the said company and rather the said documents placed on record as issued from the records of the Registrar of Companies indicate the applicant herein to be a Director with DIN No. 02894389 of the said company.

ANALYSIS

34. On a consideration of the submissions that have been made on behalf of either side, though, undoubtedly, the State has verified the factum of the applicant having undergone targeted Chemotherapy on 20.01.2021 with he having been diagnosed with Prostate Cancer, Stage-4 in March 2019, as per the synopsis filed on 26.02.2021 by the State and the applicant he has been taking medicines for the said Chemotherapy and undergoing Chemotherapy sessions since 2019.

35. The documents of the Action Cancer Hospital that the applicant has placed on record indicates that as on 20.01.2021, the applicant had been admitted for Chemotherapy and was scheduled for Chemotherapy on 21.01.2021. The said document annexed to the written submissions of the applicant dated 08.02.2021 also indicates that the applicant was being discharged in a stable condition. Though, the applicant has placed on record a copy of the verdict of the Hon'ble

High Court of Kerala in ***"Joy Thomas @ Thomas Philip Vs. The State of Kerala" 2017 SCC OnLine Ker 39256*** submitting to the effect that in that case, the applicant therein was a 67 year old man suffering from Prostate Cancer and the prayer seeking the grant of anticipatory bail had been allowed,- it is essential to observe that the facts of the instant case relied upon on behalf of the applicant are not in *pari materia* with the facts of the instant case, for in the case of ***Joy Thomas @ Thomas Philip*** (supra), it had been observed by the Hon'ble High Court of Kerala vide paragraph 4 thereof to the effect:-

> *"The Learned Public Prosecutor has vehemently opposed the prayer. He has made available the case diary for perusal.* ***On going through the case diary, it appears that the complainant has no case that the petitioner had any role in the transaction between him and the other accused. It is also seen that the petitioner is not a person with criminal antecedents."***

36. In the instant case, the allegations levelled against the applicant relate to his alleged involvement with other accused Directors of M/s Prabhu Shanti Real Estate Pvt. Ltd., i.e. ***'the company'***as being a signatory to resolutions of the said company resulting into the multi-victim cheating and duping of innocent flat buyers. Furthermore, as has been observed hereinabove, the applicant was discharged from the Action Cancer Hospital in a stable condition.

37. Taking into account the factum that the applicant is a signatory to resolutions for taking of loans by M/s Prabhu Shanti Real Estate Pvt. Ltd., i.e. ***'the company'*** of which the applicant is the Director for sums of Rs.25 Crores each from the Tamil Nadu Mercantile Bank and

M/s Muthoot Fincorp Ltd. for completion of the project of PDM Hi-Tech Homes of which the complainants are stated to be the duped investors, and the factum that during the course of the investigation, it was found that AU Financiers (India) Private Limited sanctioned a loan of Rs.5 Crores in favour of PD Memorial Religious and Educational Association, wherein, ***'the company'*** i.e. M/s Prabhu Shanti Real Estate Pvt. Ltd. of which the applicant is a Director with the said company M/s Prabhu Shanti Real Estate Pvt. Ltd. being a guarantor to the said loan and having mortgaged the project i.e. PDM Hi-Tech Homes in question, pursuant to which on the PD Memorial Religious and Educational Association having not been able to repay the loan, insolvency proceedings were initiated against M/s Prabhu Shanti Real Estate Pvt. Ltd. , i.e. ***'the company'*** by the NCLT and an IRP was appointed by the NCLT with it having been learnt through the Forensic Audit Report conducted by the IRP appointed by the NCLT that there were advances of Rs. 393 Lacs being outstanding from Bhagwati Tiles against a total purchase of Rs. 259.92 Lacs during June 2016 to June 2018; Bogus invoices amounting to Rs. 125.24 Lacs were raised during June 2016 to June 2018 from HRKH Builders Pvt. Ltd.; that the accused company used to pay Monthly Directors' remuneration to the tune of Rs. 13.90 Lacs per month during FY 2016-17 and Rs. 8.51 Lacs per month during FY 2017-18, whereas, ***'the company'*** reported a loss of Rs. 1,91,76,525.81/- in FY 2016-17 and further years; and that bogus and dubious cash payments of Rs. 169.16 Lacs during June 2016 to June 2018 were made as Labour Charges and Rs. 234 Lacs was shown against purchase of Rodi during June 2016 to June 2018; and that the accused company has defaulted to pay off government duty and taxes amounting to Rs. 73.90 Lacs, which are as follows:

- ✓ PF of Rs. 4,80,652/- has not paid since Oct 2016.
- ✓ ESIC of Rs. 1,01,729/- has not paid since Oct 2016.
- ✓ Balance TDS of Rs. 68,08,034/- has not paid since Apr 2017-18,

and that the accused company allegedly does not maintain Stock register and resultantly the actual position of stock and raw material regarding inward and outward cannot be ascertained; with the applicant herein being a signatory to the resolutions for drawing of loans from the Tamil Nadu Mercantile Bank and M/s Muthoot Fincorp Ltd. and being also a participant to being a signatory as Director of M/s Prabhu Shanti Real Estate Pvt. Ltd. to a loan of Rs.5 Crores obtained by PD Memorial Religious and Educational Association from AU Financiers (India) Private Limited in which the PDM Hi-Tech Homes project was mortgaged, the contention raised by the applicant that he was not in any manner involved in the process of duping innocent flat buyers investing their hard earned money into the project of PDM Hi-Tech Homes *prima facie,* cannot be accepted at this stage and it is apparent thus, that the applicant's association in custodial interrogation would essentially be required to unearth the conspiracy allegedly hatched between the accused persons and their associates and to recover the cheated amount and to trace the money trail and for seizure of material documents.

CONCLUSION

38. In view thereof, the prayer made by the applicant seeking the grant of anticipatory bail in relation to FIR No.59/2019 dated 04.04.2019 Police Station, Economic Offences Wing, Mandir Marg, New Delhi under Sections 406,420 & 120B of Indian Penal Code, 1860, is thus declined and the interim protection granted to the applicant vide order dated 24.11.2020 and extended till date vide order dated 01.03.2021 is thus, withdrawn.

39. However, if the applicant is in custody, in the event of the applicant requiring any Chemotherapy sessions, the State shall ensure that the adequate Chemotherapy sessions are provided for the Prostate Cancer to the applicant in police protection.

40. The application is disposed of accordingly.

41. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the trial that may take place in the instant case.

ANU MALHOTRA, J.

MAY 24, 2022
SV/NC