

\$~

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

Reserved on: 10.11.2022

Pronounced on: 14.12.2022

%

+ **BAIL APPLN. 1583/2022**

ANIL KUMAR SHARMA

.... Petitioner

Through: Mr. Manoj Singh, Advocate

versus

STATE (NCT OF DELHI)

.... Respondent

Through: Mr. Manoj Pant, APP for the
State with Insp. Raj Kumar
Pal, EOW/Delhi Police.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The petitioner through instant application filed under Section 439 read with Section 482 of the Code of Criminal Procedure (hereinafter "Cr.P.C."), 1973 seeks regular bail on medical ground as well as on merits in case/FIR no. 270/2019, registered at Police Station Economic Offences Wing (EOW), District-East, Delhi for the offences punishable under Sections 409/420/406/120B of the Indian Penal Code, 1860.

2. The brief facts of the case are that FIR bearing no. 270/2019 was registered against the petitioner and other co-accused for the offences punishable under Sections 409/420/406/120B of IPC. It is alleged that

Flat No. S-904 was allotted to the Complainant vide letter no. 029/S/904/5882/09 dated 23.10.2009 in project called “AMRAPALI SAPPHIRE” located at Plot No. GH-003, Sector-45, Noida, Uttar Pradesh. It is further alleged that after receipt of sufficient payment, the applicant/petitioner and others have not completed the project. It is revealed from the investigation that completion certificate has not been obtained and the project was not completed even after 10 years of launch of project namely Amrapali Sapphire Phase 1 and 2. It is further alleged that payments were received from home-buyers even prior to sanction of first layout plan. Accused company and director i.e., petitioner herein have represented to the public at large that they had obtained necessary approval from the concerned authority to develop projects. During investigation, it came to the notice that there are other complaints lodged by Atul Saini, Ahviani Suthar, Shaili Shalini and Devender Kumar Pathak with the same allegations that all of them had paid substantial amount of money to the applicant / builder but possession of flat was not handed over to them.

3. Learned Counsel for the petitioner stated that the learned Trial Court failed to consider the fact that Petitioner has been admitted to regular/ interim bail on medical grounds in nineteen (19) cases pertaining to Police Station Economic Offences Wing (EOW) on the basis of Petitioner's medical condition subsequent to confirmation by Medical Board comprising of seven Medical Professionals of AIIMS, New Delhi and further co-accused in the case being Director of the company has been admitted to anticipatory bail.

4. It is further stated by learned Counsel for petitioner that petitioner is in judicial custody since 07.08.2021 and twice he was released on interim bail vide order dated 17.09.2020 and 13.08.2021 and petitioner had surrendered on time and he did not misuse the liberty of bail. It is further stated that medical condition of petitioner is not good and he requires constant medical attention. It is also stated that the co-accused i.e., Rattan Singh Adhana, Suresh Kumar Sharma and Naveent Kumar were released on bail vide order dated 04.02.2022, 05.02.2022 and 17.02.2022 respectively.

5. It is also stated by learned Counsel for petitioner that he is not a potential absconder and offences against the petitioner are based on documents and the documents are in custody of the forensic auditor and therefore there are no chance of tampering with the evidence. It is further stated that the trial shall take considerable time to conclude, and no useful purpose shall be served by keeping the petitioner in judicial custody.

6. On the other hand, learned APP for the State states that the allegations are serious in nature and charge sheet as well as supplementary charge sheet in the present case has already been filed. It is also stated that petitioner had cheated multiple victims by using the same modus operandi and had made dishonest representations to the victims at the time of booking of the flats. It is further stated that the petitioner/accused builder has not obtained completion certificate from Noida Authority till date. It is submitted that petitioner/builder has failed to complete the project even after more than 10 years of launch of project namely Amrapali Sapphire Phase 1 and 2. It is further

submitted that surrender on time by the petitioner is not a ground for grant of bail as contended by the learned counsel for the petitioner.

7. Learned APP for the State further submitted that petitioner is the Director of M/s Amrapali Sapphire Developers Pvt. Ltd. from 20.03.2002 till date and he is the authorized person to operate bank accounts of the company and key person to take decisions in day-to-day affairs of the company. It is stated that petitioner along with co-accused had given false assurances to the complainant and other victims that they had all requisite approval at the time of booking of flat, but it was found that building plan was not approved at the time of booking of flats. It is further stated that the applicant/accused and other directors have cheated three persons by selling a flat i.e., Ashwani Suthar, Devender Kumar Pathak and Axis Bank as they have obtained loan from the Axis Bank.

8. I have heard the arguments on behalf of the parties and have gone through the case file.

9. Before going into the facts of the case, a reference can be made to the decision of the Apex Court in ***P. Chidambaram v. Central Bureau of Investigation, (2020) 13 SCC 337*** wherein it was observed as under:

“...21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail: -

- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;*
- (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;*
- (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;*
- (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;*
- (v) larger interest of the public or the State and similar other considerations.”*

10. A perusal of the material on record reveals that after receiving a substantial amount, petitioner along with other co-accused had stopped the construction and failed to hand over the possession of flats to the buyers on time. It is also noticed from the impugned order as well as the material on record that petitioner is one of the directors of Amarpali Sapphire Ltd. since 20.03.2002 and is the person who took key decisions in respect of the company.

11. During investigation of present case, it was revealed that petitioner along with other directors had cheated three persons regarding sale of Flat No. G-04, Tower-L, Sector-76, Noida, Uttar Pradesh by selling same unit by concealing the fact that the same flat was allotted to another person also. This act of the petitioner has caused wrongful loss to other persons/victims and wrongful gain to petitioner and other co-accused in conspiracy with each other.

12. It is again noticed from the status report that applicant and other Directors including the company have made false representation, etc to the public at large and moreover, the applicant had also not obtained

the completion certificate from the NOIDA Authority, which is required before starting any project. The applicant and his company collected huge amount from the complainant as well as other victims to the tune of Rs. 2,63,84,260/- (Rupees Two Crore Sixty-Three Lakh Eighty-Four Thousand Two Hundred Sixty Only) in the following manner:

S. No.	Complainant/Victim	Amount
1.	Ehtasamul Haque	27,72,808/-
2.	Atul Kumar Saini	58,22,250/-
3.	Ashvini Suthar	1,21,89,202/-
4.	Shaily Shalini	56,00,000/-
	Total	2,63,84,260/-

13. The Hon'ble Supreme Court in *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli) and Another*, (2021) 6 SCC 230, held that:

“24. The principles governing the grant of bail were reiterated by a two judge Bench in Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496:

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (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, behaviour, 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.*

Explicating the power of this Court to set aside an order granting bail, this Court held:

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal...

39. Grant of bail under Section 439 of the Cr.P.C. is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail – as in the case of any other discretion which is vested in a court as a judicial institution – is not unstructured...”

14. In ***Kamla Devi v.State of Rajasthan and Another, (2022) 6 SCC 725***, the Hon’ble Supreme Court held that:

“25. This Court has, on several occasions has discussed the factors to be considered by a Court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are: (i) the seriousness of the offence; (ii) the likelihood of the accused fleeing from justice;(iii) the impact of release of the accused on the prosecution witnesses; (iv) likelihood of the

accused tampering with evidence. While such list is not exhaustive, it may be stated that if a Court takes into account such factors in deciding a bail application, it could be concluded that the decision has resulted from a judicious exercise of its discretion, vide Gudikanti Narasimhulu & Ors. V. Public Prosecutor; Prahlad Singh Bhati v. NCT of Delhi & Ors.; Anil Kumar Yadav v. State (NCT of Delhi).”

15. From the material on record, it is noticed that the allegations levelled against the petitioner are serious in nature as the petitioner knowingly committed fraud upon the complainant and other victims. It is important to note here that fifty-six (56) cases have been registered against Amrapali and its group/associate companies including cases received from Noida. Out of 56 cases, twenty-one (21) cases are pending. Chargesheet has been filed in 33 cases and closure report was filed in two cases. Petitioner was granted regular bail in four cases, registered with Police Station Saket and later on transferred to EOW for further investigation. Petitioner was granted interim bail on medical ground for treatment of his ailment in 15 cases at that time.

16. The charge-sheet as well as the supplementary charge-sheet has been filed in the present case, under Sections 406/409/420/120-B of IPC which reveals that the petitioner has been associated with the accused company since the very beginning and that he actively participated in inducement of public. A perusal of the complaint(s) also shows that flat of one victim i.e., Ashwani Suthar was allotted to the other victim i.e., Devender Kumar Pathak and it was represented to Devender Kumar Pathak that the aforesaid flat is free from litigation or prior sale, etc.

17. The main contention of learned Counsel for the petitioner for grant of regular bail is that petitioner is having history of multiple ailments and is reported to be suffering from High Blood Pressure (Hypertension), Hypothyroidism (Thyroid disorder), Dyslipidemia (deranged lipid profile predisposing him to heart disease), enlarged ‘Bilateral Inguinal Hernia, Glaucoma and multiple excruciating joint pains (suspected ‘Rheumatoid Arthritis’) and requires surgery for his bilateral inguinal hernia and treatment for ‘Glaucoma’ in terms of medical opinion/report given by the doctors which could not be provided in Jail as required medical facility for the same being not available in jail.

18. The Hon’ble Supreme Court in ***Bikram Chatterjee v. Union of India & Ors., W.P. (Civil) No. 940/2017*** ordered that the petitioner be sent to AIIMS for treatment where doctors had advised medications which be provided to the petitioner from jail. As it is evident from the plain reading of the medical report that the health condition of the petitioner is stable and necessary medications are being provided to him as per advice of ophthalmologist. The medical report of the petitioner reads as under:

“...In reference to the communication received at the office of the undersigned regarding present medical stratus of pt/inmate Anil Sharma S/o M. M. Sharma, following points in this context may be noted as below:

- 1. He is known case of hypertension, CAD, hypothyroidism and bilateralthernia.*
- 2. As per order of Hon’ble Supreme Court, Pt/inmate was examined by medical board of AIIMS and surgeon advised surgery for repair of bilateral inguinal hernia. As per order,*

inmate was send to AIIMSHospital on dated 24.05.22 in surgery and Eye department fortreatment but surgery department and eye department further givenrevisit date on 07.06.22 and 26.05.22 respectively. He was further sendon 26.05.22 in eye department for eye checkup and treatment. As perophthalmologist advised medications provided to him from jaildispensary. He will also be send in surgery department on 07.06.22 forsurgical intervention workup. He is also taking medications forhypertension and hypothyroidism.

3. At present health, condition is stable... ”

19. Considering the allegations against the applicant/petitioner as well as the medical report, the circumstances leading to the registration of the present FIR and other cases filed on behalf of home-buyers that applicant along with co-accused had failed to provide flat(s) to the complainant and other victims on time after receiving a substantial payment, in conspiracy with each other having caused loss to a number of complainants, that the applicant has signed the builder buyer agreement with complainant and after extending time, had failed to deliver flats to the various home-buyers including the complainant, therefore, no ground is made out for grant of regular bail at this stage.

20. Accordingly, the present bail application filed by the applicant/accused is dismissed.

21. It is however, clarified that observations made by this Court are only for the purpose of deciding the present application and shall not be considered as opinion on merits of the case during trial.

SWARANA KANTA SHARMA, J

DECEMBER 14, 2022/zp