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

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\+ **BAIL APPLN. 2382/2022**

MUKESH KUMAR SINGH ..... Petitioner

Through: Mr. Satish Tamta, Sr. Adv with Mr. Puneet K. Rai and Mr. Shariq Iqbal, Advocates

versus

THE STATE ..... Respondent

Through: Mr. Manoj Pant, APP for the State.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

19.12.2022

SWARANA KANTA SHARMA, J. (ORAL)

1. The present bail application has been filed by the applicant/ accused under Section 439 of the Code of Criminal Procedure, 1973, (*hereinafter "Cr.P.C."*) for grant of regular bail in the FIR bearing no. 55/2020 registered at Police Station Economic Offence Wing (*hereinafter "EOW"*) for the offences punishable under Sections 420/406/409/423/411/120 B of the Indian Penal Code, 1860 (*hereinafter "IPC"*).

2. Brief facts of the case, as discernible from the material placed on record, are that an FIR was lodged on the joint complaint of Mr. Arun

Banga and 20 other complainants at P.S. EOW on 29.01.2020, wherein the allegations pertained to misappropriation of funds done by the office bearers of Eminent Officers Welfare Society (*hereinafter "Society"*) in connivance with M/s Khushi Properties and Developers Pvt. Ltd. The Society was formed on 27.07.2015 and got registered by 11 government officers offering residential flats to its members in L-zone of Delhi under Land Pooling Policy of NCT of Delhi. It is alleged that 5 acres of land was to be purchased and for that purpose, office bearers of the Society collected an amount of Rs. 19.50 crores (approximately) from around 122 of its members between the year 2015 and 2018. The present applicant against whom allegations have been leveled is the Director of M/s Khushi Properties and Developers Pvt. Ltd., who had entered into a Memorandum of Understanding (MoU) with the Society on 13.10.2015 to work as an agent on behalf of the Society for helping them to buy the land. Pursuant to execution of MoU, an amount of Rs. 16.28 crore was transferred by the Society to M/s Khushi Properties and Developers Pvt. Ltd. between the year 2015 and 2019 for the purchase of land, but only 1.9 acres of land was purchased for a sum of Rs. 7 crores, out of which Rs. 4.31 crores was paid by M/s Khushi Properties and Developers Pvt. Ltd. whereas Rs. 2.75 crores was paid directly by the Society to the landowners. It is alleged that applicant misappropriated approximately Rs. 12 crores out of Rs. 16.28 crores which it had received from the Society. It is further the case of prosecution that on 07.06.2017, the name of M/s Khushi Properties and Developers Pvt. Ltd. was struck off by Registrar of Companies (ROC) but even after that, the transactions kept on taking place, and an another MoU dated 12.04.2018 was executed between M/s Khushi Properties and Developers Pvt. Ltd. and the Society, and three cheques totaling Rs. 11.85 crore were issued as security by the applicant which were subsequently dishonored. The present applicant was arrested on 18.08.2020 and chargesheet was filed against the applicant, his wife and the accused company on 13.11.2020. Further, supplementary chargesheet was filed on 24.02.2022 against other co-accused persons.

3. Learned Senior counsel for the applicant states that the Society was formed in the year 2018 and by way of advertisement through various modes, people including government servants got allured and became members of the Society. As per the proposal made by the Society, land was to be purchased and flats were be constructed for the members of the Society. It is stated that money was collected and deposited in the account of Society, and treasurer namely Mr. Pradeep Kumar and the secretary namely Vimal Kumar were the authorized signatories for release of funds to M/s Khushi Properties and Developers Pvt. Ltd.

4. It is argued by learned Senior counsel for the applicant that a bare perusal of the supplementary chargesheet makes it clear that the inducement for providing flats was made by the governing body of the Society and the applicant had no role either in the formation of the Society or in representation for providing the residential flats. It is further stated that there is a conflict between the two chargesheets filed as in the main chargesheet, the allegations have been levelled against the applicant as well as M/s Khushi Properties and Developers Pvt.

Ltd., but, in the supplementary chargesheet, other co-accused who are office bearers of the Society have been named and no relation has been shown between them and the present applicant. It is contended by the learned Senior counsel that new management had taken over the Society and they were the custodian of money to collect and spend the same. In support of his arguments, learned Senior counsel has placed reliance upon the decision in ***Runu Ghosh v. State (CBI) 1996 SCC OnLine Del 620***, wherein this Court, while deciding a bail application observed as under:-

> *"5. At this stage of considering the application of the petitioner for the grant of bail, the Court is not required to go into the detailed examination evidence and pre-judge the case and for that exhaustive exploitation of the merits of the case are not required in the order. The Court before granting bail in cases involving non-bailable offences, is to take into consideration matters such as the nature and seriousness of the offence, the character of evidence, circumstances which are peculiar to 'the accused, a reasonable possibility of the presence of the accused not being secured at trial, reasonable apprehension of witnesses being tampered with, the larger interest of the public or the State and similar other considerations. Bail should normally not be withheld. as a punishment if, after taking into consideration other factors, the accused is entitled to the grant of bail. Bail and not jail is the normal rule. The two paramount considerations, namely, likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring fair trial of a case in the course of justice......"*

5. Learned Senior counsel further argues that the trial has not yet commenced and applicant is in custody since 18.08.2020, and also the

fact that several provisions of IPC were added subsequent to the arrest, ingredients of which are nowhere seem to be attracted in present case.

6. *Per contra*, learned APP for the State submits that no leniency be taken in the present case as hard earned money of 122 victims/ complainants has been misappropriated and siphoned off by the applicant. It is stated that even after the name of M/s Khushi Properties and Developers Pvt. Ltd. was struck off by ROC, the accused company still kept on accepting money and even entered into an MoU with the Society. It is also submitted that applicant, being Director of M/s Khushi Properties and Developers Pvt. Ltd. misappropriated funds to the tune of Rs. 12 crores and analysis of his bank account statements reveal that he had diverted these funds into various accounts, thereby misusing funds for his personal use and for payment of his personal debts. Learned APP for the State further submits that applicant is involved in another criminal case pending trial for the offences punishable under Sections 186/353/34 of the IPC. As per learned APP for State, the bail application of present applicant ought to be rejected, considering the seriousness of the offence.

7. The submissions of learned Senior counsel for applicant/accused as well as learned APP for the State have been heard, and the material on record has been perused.

8. Before adverting to the facts of present case, this Court deems it appropriate to refer to the principles governing grant of bail reiterated by the Hon'ble Supreme Court in ***P v. State of Madhya Pradesh and Anr. 2022 SCC OnLine SC 552***, which reads as under:-

"13. It is no doubt true that the High Court or for that matter, the Sessions Court have a wide discretion in deciding an application for bail under Section 439 Cr.P.C. However, the said discretion must be exercised after due application of the judicial mind and not in a routine manner. In ***Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598****, falling back on an earlier decision in the case of* ***Prahlad Singh Bhati v. NCT, Delhi (2001) 4 SCC 280****, this Court had observed as follows:—*

> *"4(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.*
> *(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.*
> *(c) While it is not expected have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.*
> *(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."*

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15. We may also profitably refer to a decision of this Court in ***Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav (2004) 7 SCC 528,*** *where the parameters to be taken into consideration for grant of bail by the Courts has been explained in the following words:*

> *"11. The law in regard to grant or refusal of bail is very well-settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed*

examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:
(a) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
(b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
(c) prima facie satisfaction of the court in support of the charge."

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*17. In the case of **Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496** after referring to several precedents, this Court held thus:*

"9. ...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."*

9. In context of economic offences, the Hon'ble Apex Court in ***Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439*** has observed as under:-

> *"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*
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> *35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."*

10. Similarly, in ***P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791***, it was held by Hon'ble Supreme Court as under:-

> *"23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the*

same in as much as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

11. In the present case, charge-sheet and supplementary charge-sheet have been filed, and since there are around 122 victims, the trail of

money is being traced qua many complaints. The present case is one of those cases where the hard earned money of senior retired Govt. Servants and other people belonging to economically poor section of society was taken on false pretext by misrepresentation and the same was also misused, misdirected and misappropriated for the own purpose and benefit of the present accused/applicant. The allegations as per the charge-sheet are that he had misused the amount so collected from the innocent victims to his own use by purchasing car and flats. More so, it is also the case of prosecution that the name of M/s Khushi Properties and Developers Pvt. Ltd had been struck off and the company was dissolved on 07.06.2017 by Registrar of Companies. However, even thereafter the present accused/applicant had entered into an MoU with the Society on 12.04.2018 regarding land deals and had obtained money in the bank account of M/s Khushi Properties and Developers Pvt. Ltd. It is also clear from the record of Registrar of Companies and concerned banks that only present applicant was managing the day to day affairs of M/s Khushi Properties and Developers Pvt. Ltd. It is also noted from the record that he had purchased car and flat in Dwarka with the money so obtained from the victims and had also used the same to repay the personal loans obtained from many persons. The bank account statement of the present applicant also reveals that huge amount of cash was withdrawn from his bank accounts. The present applicant is also involved in another FIR bearing no. 107/2017, Police Station Dwarka North, for the offences punishable under Sections 186/353/34 IPC, which is pending trial.

12. The applicant has, thus, misappropriated the hard earned money of 122 innocent victims to the tune of Rs. 12 crores. The bank account statement of M/s Khushi Properties and Developers Pvt. Ltd reveals that out of Rs. 16.28 crores, only Rs. 4.31 crores was paid to the farmers/landowners for the purchase of land and about Rs. 12 crores have been misappropriated by the present accused/applicant. The fact so discussed above, thus, make it clear that present case falls under the category of economic offences causing loss of hard earned money of innocent victims. The investigation qua many complaints against the present applicant is under way.

13. Considering the overall facts and circumstances of the case, this Court does not find any ground to grant bail to applicant at this stage, being guided by several judgments of Hon'ble Apex Court, as discussed in detail in the preceding paragraphs of this judgment.

14. Accordingly, the present bail application stands dismissed.

15. However, it is made clear that any observations by this Court in the present order shall not affect the merits of the case during the trial and the same be treated to be confined to deciding the present bail application only.

16. Copy of this judgment be given *dasti* under signature of Court Master.

SWARANA KANTA SHARMA, J

DECEMBER 19, 2022/kss