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

Reserved on: 23rd November, 2022
Decided on: 23rd December, 2022

\+ **BAIL APPLN. 3052/2022**

DEEP KANWAR SINGH WALIA .... Petitioner
Through: Mr. Mohit Mathur, Senior Advocate with Mr. Sumit Kalra, Advocate

versus

THE STATE NCT OF DELHI ..... Respondent
Through: Mr. Raghuvinder Varma, APP for State with SI Shubhendu Sharma, P.S. EOW
Mr. Sugandh Agrawal, Advocate for complainant with complainant in person

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CORAM:
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present bail application is filed under section 439 of the Code Of Criminal Procedure, 1973 (hereinafter referred to as "**the Code**") on behalf of the Deep Kanwar Singh Walia (hereinafter referred to as "**the petitioner**") for grant of bail in FIR bearing no. 268/2018 dated 27.12.2018 registered at PS Economic Offence Wing under sections 406/420/120B IPC.

2. The present FIR bearing no.0268/2018 was got registered on the basis of complaint made by J.P. Kakkar s/o C.L. Kakkar (hereinafter referred to as "**the complainant**") wherein it is alleged about cheating, fraud, and misappropriation of money which is stated to have been taken from the complainant for developing IT & IT Enabled Services Office Space(s) /Retail Unit in Project namely "Mist Avenue/Festival City" Business Towers, Sec 143-B, Noida, Uttar Pradesh at Plot No. 1, Sector 143-B, Noida by M/s Mist Avenue Private Limited (hereinafter referred to as "**the Company"**) having its registered Office at premises bearing no.28, Raja Garden, New Delhi-110015 and against its Directors, namely, Mr. Dharam Narayan Gautam, Mr. Vinod Kumar, Mr. Kanwarjit Singh and Mr. Satinder Singh Bhasin. It is alleged in FIR that the complainant is a retired Additional General Manager from Bharat Heavy Electricals Limited and invested Rs.23,61,079/- (Rupees Twenty Three Lacs Sixty One Thousand and Seventy Nine Only) in the project "Mist Avenue" in the year 2013 being developed by the Company which is one of the Company under the umbrella of Bhasin Group.

2.1 The Company advertised about the project "Mist Avenue" in the year 2013 that 33 floors/storey would be constructed in 99 days and collected/demanded money without constructing the office spaces with the *malafide* intention to dupe, cheat the buyers. The Company subsequently changed the plan and shifted the location of tower/structure which could not be permitted without the consent of all the allottees according to the U.P. Apartment Act, 2010. The Directors have changed the name of Company on RERA, U.P site without duly acting in accordance with the provisions of law and also increased the delivery time from 2018 to 2022 which was against the agreed terms with the complainant. It was not clear whether Mist Avenue/Festival City Project is being developed by M/s Mist Avenue Private Limited or M/s Mist Direct Sales Private Limited. The building structure was developed at very slow pace by the developer since 2012-13. The Company also changed its email domain names, bank accounts, project name (Mist Avenue to Festival City) and created another Company to mislead the allottees (Mist Avenue Private Limited to Mist Direct Sales Private Limited). The Ministry of Corporate Affairs (MCA) website reflects that these two companies are different. It reflected fraudulent intention of the developers with the sole intention to grab the hard earned money of the complainant.

2.2 The M/s Mist Avenue Private Limited had invited applications for Commercial IT Office Space/Retail unit in December 2012-13 with assurances to give the possession after 3 years after taking 100% payment from the complainant. The project is kept in abeyance without being constructed. M/s Anand Infoedge Private Limited has submitted the revised map on 12.01.2015 without getting permission from vagbirers and Sanctioned Authority (NOIDA) to increase the FAR and revised map/plan as evident from the letter dated 21.07.2017 of Noida Authority. The Company and its directors have duped, used criminal force, cheated, and misappropriated the funds of the innocent complainant by showing dream project plan only on paper.

2.3 The complainant was forced to enter into new contract with M/s Mist Direct Sales Private Limited which reflects the *malafide* intention to grab the hard earned money of complainant. The Directors have illegally misappropriated the funds of project "Mist Avenue" and committed criminal breach of Trust.

2.4 The Company had also advertised false details about the project "Mist Avenue" in the newspaper. The Company has also agreed with M/s Anand Infoedge Private Limited to develop the project "Mist Avenue" at Plot no.1, Sector 143-B, Noida. The Company also arranged Bhumi Poojan in the month of October, 2013. The Directors of the Company also represented that the Company had acquired rights, title and interest in the land on which project "Mist Avenue" was proposed to be constructed with the promise that the project shall be completed in a time bound of 3 years. The complainant also made other allegations in FIR as detailed in FIR itself. The investigation has already been completed and the trial is stated to be pending in the Court of Sh. Kapil Kumar, Chief Metropolitan Magistrate, District West, Tis Hazari Court, Delhi under the title **State V. Satender Singh Bhasin**. However, the further investigation is also pending. The petitioner is not mentioned or named in FIR.

3. It is stated in the bail application that vide order dated 14.07.2022 the Chief Metropolitan Magistrate recorded that the Investigating Officer (I.O.) had issued notice under section 41A of the Code against two directors, namely, Deep Kanwar Singh i.e. the petitioner and Dharam Narain Gautam but they have not joined the investigation. I.O. also informed the Court that he would be taking Non-Bailable Warrant (NBW) against the Directors i.e. the petitioner and Dharam Narain Gautam. The concerned Court was not satisfied with the investigation being conducted by the concerned I.O. I.O. on 25.08.2022 submitted an application before the Court of Chief Metropolitan Magistrate alongwith affidavit wherein I.O mentioned that he had issued notice under section 41A of the Code to the petitioner at his residence bearing no. 475, Double Storey, New Rajinder Nagar, New Delhi. The Court of Chief Metropolitan Magistrate in view of the affidavit filed alongwith application recorded that the I.O. had conducted various raids and the addresses of the petitioner and Dharam Narain Gautam and thereafter the Chief Metropolitan Magistrate ordered for issuance of Non-Bailable Warrants (NBWs) against the petitioner for 27.09.2022.

3.1 The petitioner was arrested on 05.09.2022 from his residence bearing House No.3, Sector 16 A, Chandigarh and was produced before the Court of Chief Metropolitan Magistrate on 06.09.2022. The petitioner was remanded to police custody for one day. A bail application on behalf of the petitioner was filed as there was no communication whatsoever including the notice under section 41A of the Code from I.O. which required to be served at the address of the petitioner i.e. House No.3, Sector 16 A, Chandigarh. The documents were also produced before the Court of Chief Metropolitan Magistrate that the actual address of the petitioner is House No.3, Sector 16A, Chandigarh but NBWs were issued by the I.O. at the earlier address i.e. 475, Double Storey, New Rajinder Nagar, New Delhi, from where the petitioner had left 9 years ago. The Chief Metropolitan Magistrate recorded that the petitioner did not inform about the present address at Chandigarh to the bank account of the Company, as such there was no alternate for the I.O. to trace out the other addresses of the petitioner and the ground of arrest was found to be reasonable. The petitioner was produced before the Court on 07.09.2022. I.O. did not ask for further police remand and filed an application for 14 days judicial custody of the petitioner.

3.2 The Court of Chief Metropolitan Magistrate also did not agree that the petitioner was not aware of the proceedings of the present case. The Chief Metropolitan Magistrate completely failed to consider the requirement, to serve the notice under section 41A of the Code, was on the Investigating Officer which was not complied with. The bail application of the petitioner was adjourned for 09.09.2022 and was remanded to judicial custody for 14 days. Thereafter on 12.09.2022, the I.O. submitted a supplementary reply to the bail application before the Chief Metropolitan Magistrate. The Chief Metropolitan Magistrate vide order dated 12.09.2022 has dismissed bail application without considering the arguments advanced on behalf of the petitioner.

3.3 The petitioner is entitled for bail on the ground of parity as other accused/promoter of the Company, Satinder Singh Bhasin has already been granted bail vide order dated 27.05.2019. The petitioner also filed a bail application on 13.09.2022 before the Court of the District and Sessions Judge, Delhi which was dismissed vide order dated 01.10.2022 by the court of Shri. Manish Khurana , Additional Sessions Judge-04, West/Tis Hazari Courts, Delhi in mechanical manner.

3.4 The petitioner sought the bail on the grounds that the petitioner was arrested contrary to the judgment delivered by the Supreme Court in **Satinder Kumar Antil V CBI** 2022 SCC Online SC 825. No notice has ever been served to the petitioner by the concerned I.O. under section 41A of the Code at House No.3, Sector 16A, Chandigarh. The Courts of Chief Metropolitan Magistrate and the Session Judge have failed to appreciate the law laid down in **Satinder Kumar Antil V CBI**. The main accused has already been granted anticipatory bail vide order dated 27.05.2019. The petitioner was not given the benefit of law of parity. The petitioner was a Director in the Company for a period with effect from 12.10.2012 to 01.08.2013 and was getting monthly salary of Rs.72,000/-. As per the Supplementary Reply dated 26.09.2022, the beneficiary of the money of the investors were the companies promoted by the Satender Singh Bhasin (Promoter) in the name of The Grand Vanezia Infotech, Bhasin Motors, Bhasin Infotech and no money was transferred for the benefit of the petitioner. The petitioner did not have any nexus with the group of the companies being managed by the main accused.

3.5 The concerned Court of Additional Session Judge has failed to appreciate the facts that there are total 6 FIRs lodged by different complainants in the present dispute between the flat buyers and the promoter. FIR bearing no.264/2018 has already been quashed vide order dated 23.05.2022 passed by this Court. FIR bearing nos. 268/2018, 111/2019, 112/2019 and 114/2019 were already ordered to be clubbed together vide order dated 02.08.2022 passed by this Court. In FIR bearing no.254/2019, the application for compounding of offences has already been filed by the petitioner and is pending for consideration before the Court of Chief Metropolitan Magistrate.

3.6 The charge-sheet against the main accused has already been filed wherein no allegation has been made against the petitioner. It is reflected from the charge-sheet, Satender Singh Bhasin has siphoned off the amount from the Company to its group of companies. The petitioner is neither named in FIR nor made as accused person at the time of filing of the charge-sheet as such the petitioner does not have any role to play with the alleged offence. The petitioner is already on anticipatory bail in FIR bearing nos. 425/2019, 427/2019, 841/2019 and 980/2020 registered at P.S. Gautam Budh Nagar.

3.7 The petitioner is a highly qualified person without any previous criminal antecedents. The petitioner is the father of two minor children and the sole bread earner of the family. The petitioner was never involved in any decision making of affairs of the Company and he was merely an employee of the Company. The judicial custody of the petitioner is not required. The petitioner is ready and willing to join the investigation as and when directed. The petitioner is not at flight risk and is having a deep roots in the society. It is prayed that the petitioner be released on bail.

4. The respondent had submitted the Status Report under the signature of Ghanshyam, Assistant Commissioner of Police, Economic Offences Wing. It is stated in the Status Report that the present case was got registered on the basis of the complaint made by the complainant and others. It was revealed during the investigation license was granted to M/s Anand Infoedge Private Limited on 26.10.2012 to develop the IT & IT Enabled Services Office Space(s)/Retail Unit at Plot no.1, Sector 143-B, Noida, while the bookings were invited by the Company and at that time, the Company was not having any collaboration agreement with the M/s Anand Infoedge Private Limited. The Company received the booking amount in its Bank Account bearing no. 00751100068876 at Punjab & Sind Bank, Rajouri Garden. Satinder Singh Bhasin, Mohinder Singh

Ahluwalia and the petitioner were found to be authorized signatory as well as Directors of the Company. The petitioner was found to be an active Director of the Company from 13.10.2012 to 01.08.2013 as per the information given by the Registrar of Companies. The address of the petitioner in the bank account was recorded as 475, Double Storey, New Rajinder Nagar, New Delhi and 1554, old Gadda Khana opposite Arya Samaj Park Patiala. Notices under section 41A of the Code were sent via speed post to the petitioner to join the investigation but the petitioner never joined the investigation. The efforts were also made to trace the petitioner. NBWs were ordered to be issued to arrest the petitioner on 26.08.2022 and to execute NBW on 05.09.2022, a raid was conducted at Sector-16A, Chandigarh, from where the petitioner was arrested.

4.1 The complaints of 170 victims were received about the same project which were clubbed with the present FIR. The charge-sheet in respect of the accused/Satinder Singh Bhasin has already been filed. The bail applications of the petitioner were rejected by the Court of Additional Session Judge vide order dated 01.10.2022 and by the Court of Chief Metropolitan Magistrate vide order dated 12.09.2022.

The petitioner was holding the post of the Director in the Company and was an authorized signatory. The petitioner may temper with the evidence or influence the witness. Accordingly, the bail application was opposed.

5. The learned Senior Counsel for the petitioner advanced oral arguments and written submissions were also submitted on behalf of the petitioner.

5.1 The learned Senior Counsel argued that the provisions of section 41A of the Code and guidelines as laid down in **Arnesh Kumar V State Of Bihar** (2014) 8 SCC 273 were not complied with qua the petitioner. The notice under section 41A of the Code was issued by the I.O at 475 double Storey New Rajinder Nagar, New Delhi which was the residence of the petitioner during the year 2012-13 and thereafter the petitioner is residing at House No.3, Sector 16 A, Chandigarh since 2017. The concerned I.O. has overlooked the Aadhaar Card while serving the notice under section 41A of the Code.

5.2 The petitioner was neither named in FIR and nor in main charge-sheet. There is no allegation or any role assigned to the petitioner in FIR or the charge-sheet. The only allegations are against the main accused Satinder Singh Bhasin. The perusal of the charge-sheet and supplementary charge-sheet filed against the petitioner reflects that there is not a single allegation of siphoning off or recovery of the money from the petitioner and as per the main charge-sheet, the money of the investor had gone to the bank account of the Company being owned and operated by Satinder Singh Bhasin. The petitioner was as an employee of the Satinder Singh Bhasin with a meagre salary of Rs.63,000/- for a period of 10 months and had nothing to do with the business conducted by the Company. The allegations in the supplementary charge-sheet are related to the period when the petitioner was admittedly not working or associated with the Company. The petitioner was not associated with the M/s Mist Direct Sales Private Limited in any manner as the petitioner has already resigned from the Company. The charge-sheet is filed on the premises that the petitioner was the Director of M/s Mist Avenue Private Limited, the name of which was changed to M/s Mist Direct Sales Private Limited. As per the website of Ministry of Corporate Affairs, M/s Mist Avenue Private Limited and M/s Mist Direct Sales Private

Limited are different entities. The petitioner was never been in control of the business of the Company.

5.3 The promoter/main accused Satinder Singh Bhasin has already been granted bail vide order dated 27.05.2019 passed by the Court of Additional Session Judge, which has been affirmed by this Hon'ble Court vide order dated 24.08.2022 passed in CRL. M.C. No. 4036/2019. There is no incriminating material against the petitioner. No vicarious liability can be fasten on the petitioner as there is no specific allegations made against the petitioner regarding the dishonest inducement. The incarceration of the petitioner is not justified. It is argued that the accused be released on bail.

6. The learned counsel for the complainant submitted that compliance under section 41A of the Code was sufficiently made. The Chief Metropolitan Magistrate while dismissing the bail application vide order dated 12.09.2022 observed that if the I.O. has sent notice to the petitioner at the address available with the bank then I.O has done his duty. The petitioner avoided the investigation despite being aware of the same as is reflected from the whatsapp chats.

6.1 The anticipatory bail granted to the main accused Satinder Singh Bhasin vide order dated 1.10.2022 due to the compromise between the main accused and one of the complainants and not on merits of the case. The alleged scam is of more than Rs.400 crores and also 150 victims are involved.

6.2 The petitioner was a Director of the Company i.e M/s Mist Avenue Private Limited for a period of 8-10 months and has nexus with the Company and money worth crores of rupees was transferred from the bank account of the Company to the bank accounts of various companies under the signature of the petitioner.

6.3 As per the supplementary charge-sheet, there are ample evidences which established that the petitioner was a Director during the period when the alleged scam took place and he was also the authorized signatory. The petitioner despite being aware of the order dated 14.07.2022 passed by the Trial Court avoided investigation and was absconding. It is argued that bail application of the petitioner be dismissed.

7. The Additional Public Prosecutor for the State argued on the basis of facts as mentioned in the Status Report and strongly opposed the bail application of the petitioner.

8. It is reflecting that the Company (M/s Mist Avenue Private Limited) proposed to develop project IT & IT Enabled Services Office Space(s)/Retail Unit in Project namely "Mist Avenue/Festival City" in the area of Noida. The complainant had invested Rs.23,61,079/- (Rupees Twenty Three Lacs Sixty One Thousand and Seventy Nine Only) in the year 2013, in the above mentioned project. It was proposed that the said project would be completed in 99 days but subsequently the delivery time was increased from 2018 to 2022. The Company (M/s Mist Avenue Private Limited) was also stated to be changed to M/s Mist Direct Sales Private Limited, but as per the Ministry of Corporate Affairs, these two companies were different. The complainant and other investors were also asked to enter in a new contract with M/s Mist Direct Sales Private Limited. It has became also apparent subsequently that to develop IT Office Space(s) at Plot no.1, Sector 143-B, Noida, a license was granted to M/s Anand Infoedge Private Limited on 26.10.2012 but the bookings were invited by the Company and at that time there was not collaboration agreement in existence between these two companies. There was a bank account bearing no. 00751100068876 operational in the name of the Company (M/s Mist Avenue Private Limited) in Punjab & Sind Bank, Rajouri Garden and the petitioner was found to be an Authorised Signatory in respect of the bank accounts beside other directors, namely, Satinder Singh Bhasin, Mohinder Singh Ahluwalia. The petitioner was found to be one of the Director of the Company during the period with effect from 13.10.2012 to 01.10.2013. In the said bank account, the address of the petitioner was given as 475 double Storey New Rajinder Nagar, New Delhi and 1554 old Gadda Khana opposite Arya Samaj Park, Patiala. The notice under section 41A was issued by the concerned I.O. qua the petitioner at these addresses. The petitioner never joined the investigation. During the investigation non-bailable warrants were ordered to be issued against the petitioner and the petitioner was arrested from the House bearing no.3, Sector 16 A, Chandigarh on 05.09.2022. The various complaints received against the Company were clubbed together with the complaint of the present complainant.

8.1 The bail application filed on behalf of the petitioner was rejected by the Court of CMM, West vide order 12.09.2022 and by the Court of Additional Session Judge, West vide order dated 01.10.2022. The petitioner is in judicial custody since 05.09.2022. The charge-sheet in respect of the accused Satinder Singh Bhasin and supplementary charge-sheet in respect of the petitioner have already been filed before the concerned Court.

8.2 The learned Senior Counsel for the petitioner regarding service of notice under section 41A of the Code argued that the petitioner was never served with the notice under section 41A of the Code for appearance before the concerned I.O. He further argued that the petitioner stayed at premises bearing no. 475 double Storey New Rajinder Nagar only during the period 2012-13, thereafter the petitioner stayed at House no.3 Sector 16A Chandigarh. Section 41A of the Code deals with the notice of appearance before the Police Officer. It provides that the Police Officer in a case, where the arrest of a person is not required shall issue a notice directing the person against whom a reasonable complaint has been made or information has been received that he has committed a cognizable offence to appear before the Investigating Officer at the place specified in the notice. Thereafter it is the duty of a person against whom such notice has been issued to comply with the terms of the notice.

8.3 It is apparent that the addresses which were available with the concerned bank were the addresses on which the notice under section 41A of the Code was issued qua the petitioner. The petitioner has never informed the concerned I.O. regarding the change of address i.e. the petitioner has shifted to House no.3, Sector 16A, Chandigarh. There was no occasion for the concerned I.O or bank. to find out the new address of the petitioner. The concerned I.O. was having no option except to issue or serve the notice under section 41A of the Code on the petitioner at the addresses which were available with the concerned I.O. There is no force in the arguments advanced by the learned Senior Counsel for the petitioner that the petitioner was not served with the notice under section 41A of the Code.

8.4 The learned Senior Counsel for the petitioner also argued that the main accused Satinder Singh Bhasin was granted anticipatory bail vide order dated 27.05.2019 passed by the Court of Ms. Nirja Bhatia, ASJ-03 (West), Tis Hazari Courts, Delhi in bail application bearing no.1250/2019. The Additional Public Prosecutor assisted by the counsel for the complainant argued that the accused Satinder Singh Bhasin was granted anticipatory bail vide order dated 27.05.2019 due to the settlement between the parties and the said settlement had never been complied with. The arguments advanced by the learned Senior Counsel does not provide any help to the petitioner.

8.5 The perusal of order dated 27.05.2019 reflects that the co-accused Satinder Singh Bhasin was granted bail vide order dated 27.05.2019 due to the settlement between the complainant and the co-accused Satinder Singh Bhasin and the grant of anticipatory bail to co-accused Satinder Singh Bhasin was not opposed by the complainant. There is no force in the arguments advanced by the learned Senior Counsel for the petitioner that the petitioner is entitled for the grant of bail due to parity. There is no settlement between the petitioner and the complainant and moreover the settlement which was stated to be arrived between the co-accused Satinder Singh Bhasin and the complainant was never materialized or executed.

9. The learned Senior Counsel for the petitioner also argued that the petitioner was not named in the FIR and was also not named in the charge-sheet filed in respect of Satinder Singh Bhasin, and allegations were made only against the co-accused Satinder Singh Bhasin. The petitioner was an employee under Satinder Singh Bhasin with meagre salary of Rs.63,000/- per month and remained under his employment for a period of 10 months. The petitioner was not associated with the company during the commission of alleged offence. The complainant had executed fresh agreement with M/s Mist Direct Sales Private Limited and the period of delivery of possession was further extended at that time. The petitioner was not associated with M/s Mist Direct Sales Private Limited in any manner as he has already resigned from the Company in the year 2013. The petitioner was a Director of the Company for a limited period of 10 months with effect from 12.10.2012 to 01.08.2013. The Company (M/s Mist Avenue Private Limited) and the M/s Mist Direct Sales Private Limited are the two different companies.

It is also apparent that the petitioner is not named in the FIR and no specific allegations are made against the petitioner in the charge-sheet filed against Satinder Singh Bhasin. However, during further investigation it was revealed that the Company had invited the investors through advertisement in the year 2012-13 to invest money in the Project M/s Mist Avenue and delivery of the possession was offered till the year 2015 which was extended till 2022. The complainant and other investors were forced to enter into a new contract with another company M/s Mist Direct Sales Private Limited. The petitioner was one of the Director of the company i.e. M/s Mist Avenue Private Limited during the period with effect from 12.10.2012 to 01.08.2013 as well as also the Authorised Signatory of the account operational at Punjab and Sind Bank, Rajouri Garden in which the invested money was deposited. It was also apparent that the under the signature of the petitioner the money of the investor was siphoned off from the said account of the Company to other companies. The petitioner did not join the investigation and avoided the arrest. It cannot be said at this stage that the petitioner was not directly or indirectly connected with the affairs of the company i.e. M/s Mist Avenue Private Limited. If the petitioner is not named in the FIR or chargesheet filed against Satinder Singh Bhasin, it does not mean that the petitioner was not involved in entire transaction as reflected from further investigation.

10. It is apparent that a fraud of more than Rs.400 crores was committed and about 150 persons have been duped of their money. The petitioner did not place any document on record which can reflect that the petitioner was merely an employee of the Company. Considering the gravity of the offence and other facts and circumstances, no ground for bail is made out, hence the application is dismissed.

11. Nothing in this order shall be taken as an opinion on the final merits of the case.

SUDHIR KUMAR JAIN
(JUDGE)

DECEMBER 23, 2022
'j/sd'