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

% *Judgment Reserved on : 19th October, 2023*
Judgment Delivered on: 17th November, 2023

\+ **BAIL APPLN. 1627/2023**

AJAY KUMAR ..... Petitioner
Through: Mr. Rajesh Anand, Mr. Abhay Kr. Tripathi and Ms. Hasleen Kaur, Advocates

versus

STATE NCT OF DELHI ..... Respondent
Through: Mr. Amol Sinha, ASC for State with Mr. Kshitiz Garg, Advocate and Insp. Anand Pratap Singh, PS EOW, Delhi

\+ **BAIL APPLN. 1643/2023**

AJAY KUMAR ..... Petitioner
Through: Mr. Rajesh Anand, Mr. Abhay Kr. Tripathi and Ms. Hasleen Kaur, Advocates

versus

STATE NCT OF DELHI & ANR. ..... Respondents
Through: Mr. Amol Sinha, ASC for State with Mr. Kshitiz Garg, Advocate and Insp. Anand Pratap Singh, PS EOW, Delhi

\+ **BAIL APPLN. 1644/2023**

AJAY KUMAR ..... Petitioner
Through: Mr. Rajesh Anand, Mr. Abhay Kr. Tripathi and Ms. Hasleen Kaur, Advocates

versus

STATE NCT OF DELHI ..... Respondent

Through: Mr.Ritesh Kumar Bahri and Insp. Anand Pratap Singh, PS EOW, Delhi

\+ **BAIL APPLN. 1645/2023**

AJAY KUMAR ..... Petitioner

Through: Mr. Rajesh Anand, Mr. Abhay Kr. Tripathi and Ms. Hasleen Kaur, Advocates

versus

STATE NCT OF DELHI ..... Respondent

Through: Ms. Nandita Rao, ASC for State with Mr. Amit Peswani, Mr. Jasraj Singh Chhabra, Advocates and Insp. Anand Pratap Singh, PS EOW, Delhi

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. By way of the present bail applications, the applicant seeks regular bail in (i) FIR NO. 42/2019 dated 16th March, 2019, (ii) FIR NO. 33/2019 dated 12th March, 2019, (iii) FIR NO. 10/2019 dated 8th February, 2019 and (iv) FIR NO. 43/2019 dated 16th March, 2019, all under Sections 420/406/120B of the Indian Penal Code, 1860 (IPC) registered at Police Station EOW.

2. The aforementioned FIRs were registered on the complaints of homebuyers, who have alleged that M/s Amrapali Leisure Valley Private Limited, M/s Amrapali Dream Valley Private Limited (hereinafter the accused companies), and their directors/officials, including the applicant

herein, have committed offences of cheating, fraud and criminal breach of trust in respect of various residential projects in Greater Noida, Uttar Pradesh. It is alleged that despite payment of majority of the consideration amount by most of the homebuyers, the projects were either stalled/abandoned or the possession of flats was given in a highly delayed and incomplete manner. It is further alleged that the accused persons had misrepresented the fact that all the requisite permissions/sanctions were obtained from the concerned authorities, prior to accepting the booking amount from the homebuyers.

3. The dates of arrest in each of the FIRs are as follows: -

S. No.	**Name of the Project**	**FIR No.**	**BAIL APPLN.**	**Date of Arrest**
1.	Amrapali Leisure Valley	42/2019	1627/2023	10th February, 2022
2.	Veronica Heights and Jaura Heights	33/2019	1643/2023	23rd June, 2021
3.	Amrapali Enchante	10/2019	1644/2023	23rd June, 2021
4.	Amrapali Adarsh Awas Yojna	43/2019	1645/2023	10th February, 2022

The Chargesheet has been filed in all of the four FIRs. However, the charges are yet to be framed in any of the FIRs.

4. As per the Status Reports filed on behalf of the State, the applicant along with other accused persons, is involved in a large number of cases and

the EOW and Delhi Police are investigating more than 60 cases against the Amrapali Group of Companies.

5. During the investigation, data taken from the Registrar of Companies (ROC) showed that the accused company i.e., M/s Amrapali Leisure Valley Pvt. Ltd. had last filed its audited balance sheet with the ROC for the financial year 2014-2015 and thereafter, no financial records were filed. As per the said balance sheet, out of the Rs. 1009 crores received by the accused company from homebuyers for various projects developed by it, an amount to the tune of Rs. 503.58 crores has been diverted in the form of long-term loans and advances and Rs. 65.81 crores as short term loans and advances to the group companies of Amrapali Group and others.

6. It is submitted that the present applicant, along with other accused persons, was an authorised signatory in the bank accounts of the accused companies which proves that the applicant was at the helm of the financial affairs of the accused companies.

7. Furthermore, the entire gamut of alleged financial fraud along with siphoning of the funds, allegedly committed by the accused persons including the applicant herein has been dealt with by the Supreme Court in ***Bikram Chatterji and Ors.*** **v.** ***Union of India*** in Writ Petition No. 940/2017 dated 23rd July, 2019. Further, the Supreme Court had also ordered a forensic audit of the Amrapali Group of Companies. As per the findings of the Forensic Auditor, the accused companies i.e., M/s Amrapali Leisure Valley Private Limited and M/s Amrapali Dream Valley Private Limited have diverted huge amounts to the tune of Rs. 431.11 crores and Rs. 445.33 crores respectively, collected from homebuyers, in the form of Inter Corporate Deposits (ICDs) to other companies in the Amrapali Group.

8. *Per Contra*, it has been submitted on behalf of the counsel for the applicant that the applicant herein has neither been named, nor there is any allegation against him in any of the aforementioned four FIRs.

9. It is submitted that the applicant is one of the directors of the holding company of the Amrapali Group of Companies i.e. M/s Ultra Home Construction Pvt. Ltd. with a minuscule shareholding of 3.25%. It is further submitted that the applicant had no role in the day-to-day affairs of the company and had no say in the financial matters, policy-making or the administration of the company. The applicant was entrusted with the construction activities of the various projects, many of which were delivered on time. The applicant was the director of the accused companies only for a brief time, between 2013 to 2016.

10. It is further submitted that delivery of apartments under the pending projects is now being undertaken by the NBCC, through the Supreme Court appointed Receiver, who is managing the affairs of the accused company in terms of the orders of the Supreme Court in ***Bikram Chatterji*** (Supra).

11. The applicant further states that notice under Section 41A of the Criminal Procedure Code, 1973 (Cr.P.C.) was not served on him in any of the aforementioned four FIRs, which is in violation of the guidelines passed by the Supreme Court in ***Satender Kumar Antil* v. *CBI***, AIR 2022 SC 3386

12. It is submitted that of the several FIRs registered against the Amrapali Group of Companies and its directors, the applicant has been granted regular bail/anticipatory bail in several FIRs, including in FIR No. 113/2018 by this court in a case titled ***Ajay Kumar* v. *State (NCT of Delhi)*** in BAIL APPLN. 3986/2021 decided on 6th March, 2023. Further, the applicant was recently

granted regular bail in FIR No. 202/17 and FIR No. 178/17, filed under the same charges, by the Sessions Court vide orders dated 31st October, 2023.

13. Further, the applicant had joined the investigation as and when he was called by the Investigation Officers (IO) in respective FIRs and has duly cooperated in the same.

14. I have heard the counsels for the parties and perused the material on record.

15. As per the Status Report filed on behalf of the State, there are 59 cases pending against the applicant.

16. The Applicant has filed additional list of documents on 21st September, 2023, wherein the status of various cases has been provided, as per which: -

i. In 11 cases the applicant has been granted regular bail/ anticipatory bail, including by the Coordinate Bench *vide* order dated 6th March, 2023.

ii. In two of the FIRs bearing No. 202/2017 and No. 178/2017, the applicant has been granted bail by the Sessions Court on 31st October, 2023.

iii. In 14 cases the Chargesheet has been filed without arrest.

iv. In one case, Closure Report has been filed.

v. In two cases, the FIRs have been compounded.

vi. In 17 cases, the applicant has not been arraigned as an accused.

vii. In FIR No.110/2018 and FIR No.06/2018, the main co-accused, Anil Sharma, CMD of the Amarpali Group of Companies, has been granted regular bail.

17. *Vide* detailed judgment dated 6th March, 2023, a Coordinate Bench of this court had granted regular bail to the applicant in FIR No. 113/2018, taking into account the period of incarceration as well as the role of the applicant.

18. Though in respect of the present FIRs, the applicant was arrested on 23rd June, 2021 (in FIR nos. 33/19 and 10/19) and on 10th February, 2022 (in FIR nos. 42/19 and 43/19), the applicant has been in judicial custody since 9th October, 2018 in other FIRs. Therefore, he has already been incarcerated for more than five years.

19. Even though the applicant was one of the directors in the accused companies as well as the holding company of the Amrapali Group of Companies, there are no specific allegations against the applicant being responsible for the financial matters, policy-making or the administration of the company. As per the Report of the Forensic Auditor appointed by the Supreme Court, it appears that the applicant was involved in the "***construction and coordination***" activities of the company. Needless to state, the exact role of the applicant shall be determined only after the conclusion of the trial.

20. In ***Ashok Sikka* v. *State,*** 147 (2008) DLT 552, it has been held by this Court that a mere statement that the petitioners were directors of the company at the time of commission of offence, without reference to their precise role, would not be sufficient to attach criminal liability to them.

21. It is also a matter of record that a sum of Rs.8.36 crores has already been recovered from the applicant and his family members through sale of assets, in terms of the Supreme Court's order dated 5th April, 2021.

22. Further, the Supreme Court is seized of the matter in ***Bikram Chatterji*** (Supra) whereby the Supreme Court is monitoring the completion of the

aforesaid residential projects and delivering of the constructed houses/ flats to the homebuyers. The fact that the Supreme Court is seized of the matter relating to home buyers being given possession of their flats cannot be the ground for not granting bail to the applicant in the present case.

23. The Chargesheets have been filed in all of the aforesaid FIRs and the entire evidence is documentary in nature. It is also to be noted that the charges are yet to be framed in any of the FIRs and the trial is likely to take a long period of time, taking into account the voluminous documents and the large number of witnesses to be examined.

24. The conduct of the applicant in jail has been satisfactory. He was granted interim bail for a period of two months on medical ground on 31st October, 2020 and he had duly surrendered back on time. The applicant has also surrendered his passport.

25. It is a settled principle of law that bail is the rule and jail is an exception. The right to speedy trial and justice has been recognized as a fundamental right by the Supreme Court. Reliance in this regard is placed on the Supreme Court's judgment in ***Sanjay Chandra* v. *CBI,*** (2012) 1 SCC 40. The relevant portions of the said judgment are set out below: -

> *"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*
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> *22. From the earliest times, it was appreciated that detention*

in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances."

26. In the present case, the evidence is primarily documentary in nature and already within the custody of the prosecution therefore there is no likelihood of the applicant tampering with the evidence if released on bail. Also considering that the complainants are homebuyers, there is little possibility of applicant influencing or threatening the witnesses. The applicant has already deposited his passport, hence there is no possibility of him leaving the country.

27. Taking into account the voluminous documents, the number of witnesses and that the trial is likely to take a long time, the applicant cannot be kept under incarceration for an indefinite period of time. Accordingly, considering the totality of the facts and circumstances and the period of incarceration already suffered by the applicant, this Court is inclined to grant bail to the applicant.

28. For the forgoing reasons, the applications are allowed and the applicant is directed to be released on furnishing a personal bond in the sum of Rs. 1,00,000/- with one surety of the like amount subject to the satisfaction of the Trial Court and further subject to the following conditions:

i. The applicant shall not leave the country without the prior permission of the Court.

ii. The applicant shall appear before the Trial Court as and when the matter is taken up for hearing.

iii. The applicant shall join investigation as and when called by the Investigating Officer (IO) concerned.

iv. The applicant shall provide his latest/fresh mobile number(s) to the IO concerned, which shall be kept in working condition at all times and shall not switch it off or change the mobile number(s) without prior intimation to the IO concerned.

v. The applicant shall provide his permanent address to the Trial Court. The applicant shall intimate the Court by way of an affidavit and to the IO regarding any change in his residential address.

vi. The applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses or tamper with the evidence of the case.

29. Needless to state that any observations made herein are purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the case.

30. Accordingly, the applications are disposed of.

AMIT BANSAL, J.

NOVEMBER 17, 2023
sr/rt