



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

% ***Date of decision: 13th July, 2023***

+ **BAIL APPLN. 2025/2023**

PRABHAKAR REDDY

..... Petitioner

Through: Mr.N.Hariharan, Sr.Advocate with
Mr.Alapati Sahitya Krishna,
Mr.Harish Chowdhary, Mr.Sharian
Mukherji, Mr.Varun Deswal,
Mr.Siddharth S.Yadav, Mr.Punya
Rekha Angara, Mr.Prateek Bhalla and
Ms.Pooja Tripathi, Advocates.

versus

STATE OF DELHI (GOVT. OF NCT)

..... Respondent

Through: Mr. Sanjeev Bhandari, ASC (Crl) for
the State with Mr.Kunal Mittal and
Mr.Saurabh Tanwar, Advocates.
SI Amit Kumar PS.EOW
Mr.Sanjeev Sahay, Ms.Shagun
Saproo, Mr.Karandeep Singh,
Advocates for complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. By this petition, the petitioner seeks regular bail in FIR No. 23/2019 under Sections 406/420/120-B of the Indian Penal Code, 1860 (IPC) dated 20th February, 2019 registered at the Economic Offences Wing, Police Station Mandir Marg, New Delhi.
2. Petitioner has been in custody since 4th May, 2023. Chargesheet has been filed on 1st July, 2023.
3. As per the case of the prosecution, the present FIR came to be

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registered on the complaint of Mr. Vivek Rana, authorized representative of DMI Finance Private Limited [hereinafter “complainant company”], wherein it was alleged that M/s P dot G Constructions Private Limited [hereinafter “borrower company”], through its directors including the petitioner and his wife, took a loan of Rs.35,00,00,000/- from the complainant company *vide* First Term Loan Agreement dated 18th August 2015. A Second Term Loan Agreement was also signed between the parties on 27th January, 2017, in terms of which a further amount of Rs.17,00,00,000/- was sanctioned.

4. Upon failure of the borrower to repay the loan, a Memorandum of Settlement dated 3rd January, 2017 was executed among the parties. Under said agreement, the borrower company transferred rights in certain identified unsold flats as well as assigned receivables of certain identified sold flats in favour of the complainant company.

5. It is alleged in the complaint that without the knowledge of the complainant, the accused persons transferred ownership and possession of certain apartments that were assigned to the complainant. It is further alleged that the loan amount was diverted in other projects and therefore, wrongful loss of Rs.52,00,00,000/- was caused to the complainant.

6. During the course of investigation, certain bank accounts of the borrower company were identified and were debit frozen. The investigation also revealed that the petitioner and his wife were the directors of the borrower company. The forensic audit report of the borrower company was obtained from Brahmayya & Co. Chartered Accountants, which revealed that cash receipts and bank receipts that were recorded in the internal Cash Relationship Management data of the borrower company were not

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accounted in the books of accounts. The investigation further revealed that the payment made by the various home buyers were directly taken by the accused and utilized for personal or other projects. The investigation concluded that the accused persons, contrary to the terms and conditions of the assignment agreement with the lenders, did not deposit the receivables in the Escrow Account and misappropriated the same.

7. The bail applications of the petitioner were dismissed by the learned Chief Metropolitan Magistrate and by the learned Additional Sessions Judge *vide* orders dated 26th May, 2023 and 2nd June 2023 respectively.

8. Senior counsel appearing on behalf of the petitioner has made the following submissions:

8.1. Taking into account that the chargesheet has already been filed and the investigation having been completed, there is no requirement to keep the petitioner in custody.

8.2. The dispute in the present case is of a civil nature given the colour of an economic offence.

8.3. The Resolution Professional has already been appointed in respect of the borrower company. In the CIRP proceedings, a principal amount of Rs.79,00,00,000/- of the complainant company has already been admitted.

8.4. Flats that were sold by the borrower company were not part of the Schedule to the loan agreement, which were assigned in favour of the complainant company.

8.5. The petitioner is not a flight risk as he resides in Chennai and carries out business in India. Further, the passport of the petitioner has already been seized by the investigating authorities and is in their possession.

8.6. Since the petitioner is no longer a director of the borrower company

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and control of the company has been given to RCC E-Constructions (P) Ltd., there is no possibility of the petitioner influencing witnesses.

8.7. The dispute on account of which the present FIR has been filed only involves documentary evidence relating to the borrower company, the control of which has been handed over to RCC E-Constructions (P) Ltd. Therefore, there is no possibility of the petitioner tampering with the documentary evidence if enlarged on bail.

9. Learned ASC appearing on behalf of the State submits that wife of petitioner, also being the director in the borrower company, is currently being interrogated and a supplementary chargesheet is likely to be filed. He submits that the petitioner be kept in judicial custody at least till the investigation qua the petitioner's wife is complete.

10. Counsel appearing on behalf of the complainant vehemently opposes the grant of bail to the petitioner. He submits that the forensic report clearly shows that the petitioner has misappropriated the funds and has also cheated the complainant company by diverting the amounts from the Escrow Account.

11. In rebuttal, senior counsel for the petitioner submits that the petitioner's wife has already been granted anticipatory bail and custody of the petitioner is not required to make investigation qua the petitioner's wife. He further submits that the petitioner shall continue to cooperate during such investigation.

12. I have heard the counsels for the parties.

13. From the record of the case, it is clear that the evidence in this case is documentary in nature and has already been gathered by the prosecution. Further, now that the chargesheet has been filed by the investigation agency,

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the investigation, as regards the petitioner, is complete. Additionally, the veracity of the forensic report relied upon by the counsel for the complainant can only be established during trial.

14. The permanent place of residence of the petitioner is Chennai and he carries out business only in India. The passport of the petitioner has already been seized by the investigating authorities. Therefore, the petitioner is unlikely to evade justice.

15. The petitioner is also no longer a director of the borrower company and is hence, unlikely to tamper with evidence or influence any witnesses.

16. Merely the pendency of the investigation qua the wife of the petitioner cannot be the reason for denying bail, particularly when the investigation qua the petitioner is already complete and chargesheet has been filed.

17. At this stage, reference may be made to the judgment of the Supreme Court in *Sanjay Chandra v. CBI*, (2012) 1 SCC 40, wherein the following observations have been made:

“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.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a

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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.

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46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI."

18. In light of the extract above and the fact that the trial in the matter is likely to take some time and the assurance given on behalf of the petitioner that he shall continue to cooperate in the investigation qua his wife as well, it would not be prudent to keep the petitioner behind bars for an indefinite period. The petitioner has already spent 70 days in custody.

19. For the forgoing reasons, this Court finds the present matter to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is

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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 petitioner shall not leave the country without prior permission of the Court. The passport of the petitioner has already been surrendered.
 - ii. The petitioner shall provide his latest/fresh mobile numbers to the IO concerned, which shall be kept in working condition at all times and shall not switch off or change the mobile number(s) without prior intimation to the IO concerned. The petitioner shall keep his live location on at all times and drop a Google pin from his mobile number to the IO concerned so as to inform the IO of the current location of the petitioner.
 - iii. The petitioner shall appear in person before the IO twice in a period of 30 days.
 - iv. The petitioner shall provide his permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and the IO regarding any change in his residential address.
 - v. The petitioner shall appear before the Trial Court as and when the matter is taken up for hearing.
 - vi. The petitioner shall join investigation as and when called by the IO concerned.
 - vii. The petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant or any member of the complainant's family or tamper with the evidence of the case.
20. Needless to state that any observations made herein are purely for the

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purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the case.

21. Accordingly, the petition is disposed of.

AMIT BANSAL, J.

JULY 13, 2023

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