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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 11th January, 2023

Pronounced on: 24th January, 2023

+ BAIL APPLN. 3177/2022 & CRL.M.(BAIL) 1306/2022 (Interim Bail)

AJAY YADAV

..... Petitioner

Through: Mr. Anurag Ahluwalia, Mr. Hem
Kumar, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Aman Usman, APP for State with
SI Sohan Thakur, PS: Jyoti Nagar.
Mr. Viraj Datar, Sr. Adv. With Mr.
Shalabh Gupta, Ms. Himani Aggarwal,
Mr. Gagan, Mr. Saurav Joon,
Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA J.

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') seeks grant of regular bail in case FIR No. 584/2022 dated 07.08.2022, under Sections 420/467/468/471/448/120B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'), registered at PS Jyoti Nagar.

2. By three separate judgments of the same date, this Court has disposed of three other bail applications filed on behalf of the applicant, being BAIL

APPLN. 3174/2022 seeking grant of regular bail in case FIR No. 408/2022, BAIL APPLN. 3175/2022 seeking grant of regular bail in case FIR No. 585/2022 and BAIL APPLN. 3176/2022 seeking grant of regular bail in case FIR No. 557/2022. The said FIRs have been registered under Sections 420/467/468/471/448/120B of the IPC, at PS Jyoti Nagar. The said FIRs are based on a similar set of allegations with respect to the present applicant, except for the fact that they relate to distinct plots of land. It is pertinent to note that that except for FIR No. 408/2022, all the FIRs have been registered at the instance of M/S Capital Land Builders Pvt. Ltd. FIR No. 408/2022 has been registered at the instance of M/S Runwell (India) Pvt. Ltd., a sister concern of M/S Capital Land Builders Pvt. Ltd.

3. The present FIR has been registered at the instance of M/s Capital Land Builders Pvt. Ltd. (hereinafter referred to as ‘complainant company’), through its authorized representative, Shri Manoj Bansal. Briefly stated, the facts leading up to the registration of the present FIR are as under:

- (i) The complainant company is stated to have been incorporated in the year 1959 with a total share capital of 15 shares, by Smt. Satya Chowdhary with 10 shares and Sh. Kishor Lal Sachdeva with 5 shares. In the year 1960, Smt. Satya Chowdhary transferred 5 of her shares to Sh. Kishor Lal Sachdeva and 40 new shares were allotted to him as well. In the year 1962, 500 shares issued by the complainant company were allotted to one Late Sh. Chowdhary Brahma Prakash, who in 1963, transferred the said shares to the Shaheed Memorial Society (hereinafter referred to as the ‘Society’), of which he was the President. In 1967, 45 shares were transferred to M/s Runwell (India) Pvt. Ltd. by Sh. Kishor Lal Sachdeva. It is the case of the complainant company

that between 1968 to 1989, the Society sold all of its shares to various persons and thus, ceased to be a shareholder.

- (ii) It is the case of the complainant company that on 10.03.2006, acting through its President, Sh. Ajay Chowdhary, the Society convened an extra-ordinary general meeting of the complainant company and fraudulently removed Sh. Om Prakash Sachdeva, Sh. Ankur Sachdeva and Smt. Promila Kishore as Directors and appointed Sh. Ajay Yadav (applicant herein), Sh. Arjun Chowdhary, Sh. Surender Pal and Sh. Abdul Haq Farhan as Directors.
- (iii) Aggrieved by the aforesaid action, the complainant company filed a civil suit before this court, bearing number C.S.(OS) 1906/2006, titled M/s Capital Land Builders Pvt. Ltd. and Ors. v. Shaheed Memorial Trust and Ors. During the course of proceedings in the said civil suit, on an application filed by the plaintiffs therein under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), this Court, *vide* order dated 06.10.2006, granted an *ex-parte ad interim* injunction and restrained the defendants therein, which also included the present applicant, from representing themselves as shareholders/representatives of the plaintiff therein, i.e., the complainant company. The said injunction was vacated by an order of this Court dated 06.08.2009. Thereafter, in an appeal filed against the order dated 06.08.2009, in FAO(OS) 337/2009, a Division Bench of this court, *vide* order dated 06.11.2009, set aside the order dated 06.08.2009, thereby restraining the applicant and others from holding themselves out as shareholders and Directors of the complainant company during pendency of the suit. A Special Leave Petition bearing

number SLP(C) 1277/2010 filed by the applicant herein assailing the order of the Division Bench of this Court dated 06.11.2009 was dismissed by the Hon'ble Supreme Court *vide* order dated 19.03.2010.

- (iv) In the complaint, it has been alleged that in violation of the aforesaid order of this court, the applicant, purporting to be a Director of the complainant company, fraudulently executed a sale deed dated 07.05.2007 of a plot of land, bearing number A-55, Kailash Nagar Colony, Loni Road, Shahdra, New Delhi (hereinafter referred to as 'subject property') in favour of Sh. Sandeep Bohra. The subject property is stated to be owned by the complainant company *vide* registered sale deed dated 07.07.2004 executed in its favour by M/S G.S. Kashyap and Sons (HUF) through its General Attorney. Thereafter, upon an application filed under Section 156(3) CrPC, the learned Chief Metropolitan Magistrate, Shahdra District, Karkardooma ordered the registration of the present FIR *vide* order dated 04.08.2022.

4. Learned counsel appearing on behalf of the applicant submitted that the case of the complainant company that the 500 shares held by the Society were transferred to various persons including members of the 'Sachdeva Group' and their associates is false. It is submitted that the Society never transferred its shares to anyone and continues to remain a majority shareholder of the complainant company. Thereafter, the society, acting through its President, Sh. Ajay Chowdhary convened an Extra-Ordinary General Meeting of the complainant company on 10.03.2006 and appointed Sh. Ajay Yadav (applicant herein), Sh. Arjun Chowdhary, Sh. Surender Pal and Sh. Abdul Haq Farhan as Directors. It is submitted that in that regard, Form-32 and other statutory requirements were complied with and filed with the Registrar of

Companies. Various resolutions were passed, including those authorising the applicant to execute sale deeds on behalf of the complainant company *qua* different plots of land situated in Kailash Nagar Colony, Shahdra, New Delhi. Pursuant to the said resolutions, sale deeds were executed *qua* various plots of land by the applicant between 2006 and 2007.

5. It is submitted that thereafter, between 2006 and 2017, 11 different FIRs were registered at the instance of the complainant company against the applicant and others, out of which chargesheets were filed in four FIRs bearing numbers 229/2006, 612/2007, 742/2014 and 672/2015, registered at PS M.S. Park. Chargesheets against the applicant were filed in FIRs bearing numbers 229/2006 and 612/2007 on 14.02.2019, without arrest.

6. Learned counsel appearing on behalf of the applicant further submitted that the learned Chief Metropolitan Magistrate, Shahdra District, Karkardooma, *vide* 12 separate orders passed between 30.05.2022 and 25.08.2022, ordered registration of FIRs, including the present FIR, against the applicant and others, all of which were registered at PS Jyoti Nagar under Sections 420/467/468/471/448/120B of the IPC. It was submitted that all the said FIRs are related to a common cause of action, which allegedly arose when the complainant company gained knowledge about the sale of a few plots stated to be owned by it and its sister concern – M/s Runwell (India) Pvt. Ltd. by the present applicant. In that behalf, it is submitted that a perusal of the 11 earlier FIRs and the chargesheets would show that the allegations made therein are similar to the 12 new FIRs registered pursuant to orders of the learned Metropolitan Magistrate in the year 2022 and thus, there was no occasion for registration of 12 fresh FIRs relating to the same issue, i.e., sale of plots of land by the applicant stated to be owned by the complainant

company. Specifically, with respect to the subject property in the present FIR bearing number A-55, Kailash Nagar Colony, Loni Road, Shahdra, New Delhi, it was pointed out that allegations with respect to the same were also part of the subject matter of investigation in FIR No. 612/2007.

7. It was further submitted by the learned counsel appearing on behalf of the applicant that 11 civil suits are also pending before this Court, *inter-alia* pertaining to the applicant's role in the complainant company, in which issues have been framed by this Court *vide* a common order dated 25.01.2022. In particular, attention of this court has been invited to 'issue no. 12' framed in CS(OS) 1376/2007 and CS(OS) 1607/2007 which is as under:

“12. Whether the Sale Deed executed by Defendant No. I is a nullity and *non est* by virtue of an order dated 20th April, 2009, passed in the suit bearing No. CS(OS) 1906/2006. OPP”

With regard to the aforesaid issue no. 12, it has been further clarified as follows:

“5. Further, it is clarified that the issues no. 1 and 12 framed above the aforesaid suits, i.e., CS(OS) 1376/2007 & CS(OS) 1607/2007 - shall also be read as issues in other suits pertaining to the cancellation of the Sale Deeds where the counter-claims have also been dealt with. The issue of 'indoor management' is now to be read in all the cases.”

It was submitted that the outcome of the said 11 suits would also determine the final outcome of the criminal cases pending against the applicant and others. Learned counsel appearing on behalf of the applicant submitted that the pendency of 11 civil suits and the earlier 11 FIRs including the consequential chargesheets and the fact that the applicant has not been arrested in any of them has erroneously been overlooked by the Investigating Officer of the present case.

8. Learned counsel appearing on behalf of the applicant has further invited the attention of this Court to the judgment dated 12.10.2020, passed in I.A. No. 4570/2014 in CS(OS) 1451/2012, titled Shaheed Memorial Society (Regd.) & Ors. v. Promila Kishore & Ors., and in particular, to paragraphs 63 to 68. In view thereof, it is submitted that the propriety of the claim of the complainant company relating to transfer of shares by the Society is itself an issue pending adjudication.

9. It is submitted on behalf of the applicant that he had joined the investigation as and when called for by the Investigating Officer and was cooperating with the same. Despite that, he has been arrested. In support of his contentions, learned counsel placed reliance on judgments of the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar, MANU/SC/05559/2014 and Satender Kumar Antil v. Central Bureau of Investigation, MANU/SC/0851/2022.

10. Learned APP appearing on behalf of the State has placed on record status report dated 17.12.2022, authored by Inspector Lalan Keshari, SHO, PS Jyoti Nagar, wherein it has been stated that Mr. Manoj Bansal, acting as the authorized representative of the complainant company inspected the documents at the office of Sub-Registrar-IVA and came to know about the sale of the subject property by the applicant *vide* a sale deed dated 07.05.2007, registered as Document no. 1591 in Addl. Book No. 1, Vol. 320, , on pages 121 to 127. It is further stated that the Sub-Registrar-IVA was intimated by the complainant company about the injunction order dated 06.10.2006 passed by this Court against the applicant. Thereafter, it is stated that the Sub-Registrar-IVA gave an undertaking before this Court on 30.10.2006 stating that he is aware of the order of this Court and shall not

register any documents executed by the applicant. Therefore, the registration of the sale deed executed by the applicant is a clear violation of the said undertaking.

11. It is further stated in the status report that upon interrogation, the applicant stated that he was Director of the complainant company in the year 2007 when the sale deed was executed. It is further recorded that when asked about why his name is not reflected as a 'Director' in the report of the Registrar of Companies, he gave a vague answer. Thereafter, the applicant was arrested on 31.08.2022 and was remanded to one day's police custody. He has been in judicial custody since 01.09.2022.

12. Learned APP appearing on behalf of the State opposed grant of regular bail to the applicant on the following grounds:

- (i) The nature of the crime the accused has committed is serious in nature.
- (ii) Original documents pertaining to the transaction alleged to have been made by the applicant are yet to be recovered and investigation is required.
- (iii) The applicant is likely to jump bail and commit an offence of a similar nature again.
- (iv) The applicant may tamper with evidences and destroy the evidences if granted bail.

13. Learned Senior Counsel appearing on behalf of the complainant company submitted that in the year 2005, online filing of Annual Returns and various other statutory forms were introduced by the Registrar of Companies, Ministry of Corporate Affairs. Thereafter, Sh. Ajay Chowdhary, acting as the President of the Society filed Form-32 and removed 3 legitimate directors of the complainant company and appointed 4 of his associates as Directors.

Thereafter, the applicant executed several sale deeds of plots of land owned by the complainant company, without any authority. It is submitted that in that regard, a chargesheet has been filed against Ajay Chowdhary in case FIR no. 44/3013, under Sections 182/420/471 IPC registered at PS MS Park, wherein it has been stated that Ajay Chowdhary has used forged documents and misrepresented himself with an ulterior motive to cause gain to himself.

14. It is further submitted that the sale deed was executed in complete violation of the injunction granted by this court *vide* order dated 06.10.2006 in CS(OS) 1906/2006. Learned Senior Counsel appearing on behalf of the complainant company further invited attention of this Court to order dated 20.04.2009 passed in CS(OS) 1906/2006 on an application filed under Order XXXIX, Rule 2A of the CPC, whereby 26 sale deeds executed by the applicant and others, in violation of the injunction order dated 06.10.2006 were declared *non-est* and they were held guilty of contempt of court for violating the order dated 06.10.2006. It was observed as under:

“33. Therefore, in the present case also nothing more needs to be done in respect of the Sale Deeds executed. by contemner Ajay Yadav as a Director of the Company with the approval of its Board of Directors comprising of defendants 2-6 except to declare that all the Sale Deeds, copies of which have been placed on record and details whereof have already been noticed in this order, are non est and they passed over no right in favour any person.”

15. Learned Senior Counsel appearing on behalf of the complainant company further pointed out that *vide* order dated 25.05.2006, the applicant and others who were found to be in contempt of court as aforesaid, were directed to be detained in civil prison for a period of two weeks. The properties enlisted in Para 12 of the order dated 20.04.2009, which were stated to have been sold by the applicant were also directed to be attached.

Therefore, it was submitted that in view of his conduct in completely disregarding and violating orders of the Court, the applicant does not deserve any leniency from the Court. In support of his contentions, learned Senior Counsel placed reliance on judgment of the Hon'ble Supreme Court in Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40.

16. Heard learned counsel for the parties.

17. At this juncture, it is pertinent to note that the limited issue before this court is whether in the facts and circumstances of the case, the applicant is entitled to grant of regular bail. The merits of the disputes *inter-se* between the parties and their claims regarding control and management of the complainant company are already pending adjudication before the concerned courts.

18. Admittedly, the *inter-se* dispute between the parties is with respect to the ownership of the plots, *vis-a-vis* the complainant company. The said dispute has been subsisting since 2006/2007. It is also an admitted position that the allegations in all the FIRs registered against the present applicant are essentially the same, except for the subject property mentioned in the said FIRs. Further, it is also an admitted position that out of the previous 11 FIRs, chargesheets against the applicant were filed in FIRs bearing numbers 229/2006 and 612/2007 on 14.02.2019, without arrest.

19. A perusal of the status report reflects that the applicant joined the investigation. The investigation *qua* the applicant is complete and chargesheet has been filed. It is also pertinent to note that while he was in judicial custody, the applicant was not interrogated with respect to the other FIRs which have been registered against him and are pending investigation.

20. The applicant has been facing trial in case FIR No. 229/02006 and case

FIR No. 612/2007 since 14.02.2019. The fact that there is no allegation against the applicant, in the status report, regarding tampering with the evidence or otherwise, would also be a relevant factor for determining the present application.

21. The transaction alleged to have been executed by the applicant in the present FIR pertains to a sale deed executed on 07.05.2007, which again relates to a contemporaneous period of time when the earlier FIR No. 229/2006 dated 09.06.2006 was registered and in which chargesheet was filed against the applicant, without his arrest, on 14.02.2019. Although, the plots in question in the later FIRs are different and as per the complainant company, the factum of the transaction *qua* the said plots executed by the applicant came to their knowledge only in the year 2022, the fact remains that the sale deed executed by the present applicant was in 2007.

22. The Hon'ble Supreme Court, in *Satender Kumar Antil v. Central Bureau of Investigation and Anr.*, (2022) 10 SCC 51, while dealing with bail in cases relating to economic offences has held as under:

“90. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in *P. Chidambaram v. Directorate of Enforcement* [*P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791 : (2020) 4 SCC (Cri) 646], after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field:

Precedents

91. *P.Chidambaram v. Directorate of Enforcement* [P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791 : (2020) 4 SCC (Cri) 646] : (SCC pp. 804-805, para 23)

“23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench [*Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch 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.”

92. *Sanjay Chandra v. CBI* [*Sanjay Chandra v. CBI*, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] : (SCC pp. 62-64, paras 39-40 & 46)

“39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds : the primary ground is that the offence alleged against the accused

persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

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.”

Role of the court

93. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications

will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.”

23. In the present case, the applicant was arrested on 31.08.2022 and he has been in judicial custody since 01.09.2022. The investigation *qua* the applicant is complete and chargesheet has been filed and any further investigation, if required to be conducted, cannot be a sufficient ground for continued detention of the applicant in judicial custody. No useful purpose will be served by keeping the applicant in custody any further. As far as the alleged previous conduct of the applicant is concerned, the Hon’ble Supreme Court, in Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40, while observing that denial of bail as a sign of disapproval for former conduct would be improper, has held as under:

“**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 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.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”

24. In view of the facts and circumstances of the present case, the application is allowed.

25. The applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 1,00,000/- alongwith one surety of like amount to the satisfaction of the learned trial Court/Duty Magistrate, further subject to the following conditions:

- i. The memo of parties shows that the applicant is residing at A-3, Indian Express Apartment, Mayur Vihar-1, New Delhi - 110096. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court and the Investigating Officer.
- ii. The applicant shall not leave India without the prior permission of the learned Trial Court.
- iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.
- v. The applicant shall join the investigation, as and when required by the Investigating Officer.

vi. In case it is established that the applicant tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled *forthwith*.

26. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.

27. The application stands disposed of along with all the pending application(s), if any.

28. Let a copy of this order be communicated to the concerned Jail Superintendent, for necessary information and compliance.

**AMIT SHARMA
JUDGE**

JANUARY 24, 2023/ab

